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Presidential Documents

Title 3—

The President

Proclamation 5533 of September 23, 1986

Child Health Day, 1986

By the President of the United States of America

A Proclamation

It is fitting that we celebrate Child Health Day in the month marking the beginning of the centennial year of the National Institutes of Health (NIH). The NIH has served all Americans through research that has helped us to safeguard and enhance the health of our Nation's children.

Because of the NIH's biomedical research, deaths from illnesses common to children—diarrhea and infectious diseases—have been markedly reduced in this country and throughout the world. Many youngsters with chronic disorders, like diabetes and asthma, are leading nearly normal lives, thanks to research advances that have provided new medications and new therapeutic techniques. Childhood cancers, once inevitably and invariably fatal, are now yielding to treatment. Some are being cured. Infant mortality has shown a dramatic decrease in recent years, due in large part to a better understanding of the nutritional needs and environmental support systems needed to assure the survival of low-weight and premature infants.

On this Child Health Day, 1986, we must reaffirm our commitment to protect and improve the health of our children, for they represent our future.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution approved on May 18, 1928, as amended (36 U.S.C. 143), do hereby proclaim Monday, October 6, 1986, as Child Health Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-21932
Filed 9-24-86; 12:25 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5534 of September 23, 1986

Veterans Day, 1986

By the President of the United States of America

A Proclamation

Veterans Day gives all Americans a special opportunity to pay tribute to all those men and women who, throughout our history, have left their homes and loved ones to serve their country.

Their willingness to give freely and unselfishly of themselves, even their lives, in defense of our democratic principles has given our great country the security we enjoy today. From Valley Forge to Vietnam, through war and peace, valiant, patriotic Americans have answered the call, serving with honor and fidelity.

On this special day, our hearts and thoughts turn to all the Nation's veterans. Let us reflect on the great achievements of those whose sacrifices preserved our freedom and our way of life. With a spirit of pride and gratitude, let us recall their heroic accomplishments and thank them for their unselfish devotion to duty. They are indeed worthy of the solemn tribute of a grateful Nation.

I invite all Americans to join me in observing Veterans Day—through appropriate ceremonies, activities, and commemorations on November 11.

In order that we may pay fitting homage to those men and women who have proudly served in our Armed Forces, the Congress has provided (5 U.S.C. 6103 (a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Tuesday, November 11, 1986, as Veterans Day. I urge all Americans to recognize the valor and sacrifice of our veterans through appropriate public ceremonies and private prayers. I also call upon Federal, State, and local government officials to display the flag of the United States and to encourage and participate in patriotic activities throughout the country. I invite the business community, churches, schools, unions, civic and fraternal organizations, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-21933
Filed 9-24-86; 12:26 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 528]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 528 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 203,200 cartons during the period September 28 through October 4, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 528 (§ 910.828) is effective for the period September 28 through October 4, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant eonomic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This regulation is consistent with the marketing policy for 1986-87. The committee met publicly on September 23, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is somewhat improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.828 is added to read as follows:

§ 910.828 Lemon Regulation 528.

The quantity of lemons grown in California and Arizona which may be handled during the period September 28 through October 4, 1986, is established at 203,200 cartons.

Dated: September 24, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-21958 Filed 9-25-86; 8:45 am]

BILLING CODE 3410-02-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1505

Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children; Statements of Enforcement Policy on Hot Surfaces of Toys

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; statements of enforcement policy. [1]

SUMMARY: The Commission's electrical toy regulations specify maximum permissible temperatures for different surfaces on electrical toys. In response to a petition, the Commission is clarifying how a test probe will be used to evaluate surface accessibility. In addition, the Commission is clarifying the definition of one surface category.

DATE: These statements of enforcement policy become effective on September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Christine Nelson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulations

Before the Consumer Product Safety Commission came into existence in 1973,

[1] The Commission voted 2-1 to issue these statements, with Chairman Scanlon preferring to propose them first for public comment.

the Food and Drug Administration (FDA) administered the Federal Hazardous Substances Act (FHSA). In 1972, the FDA proposed FHSA safety regulations for electrically operated toys and other articles intended for use by children. The FDA issued these regulations in final form in 1973, and the Commission then republished them the same year. 16 CFR 1500.18(b)(1) and Part 1505; *see* 38 FR 6138 (March 7, 1973) and 38 FR 27032 (Sept. 27, 1973).

The electrical toy regulations generally apply to "any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110–125 v.) branch circuits." 16 CFR 1505.1(a)(1). They contain requirements for labeling, manufacturing, electrical design and construction, performance, and maximum acceptable temperatures for surfaces and materials. 16 CFR 1505.3–.8. If any toy or other children's article fails to meet a regulatory requirement, it is a "banded hazardous substance" under the FHSA. 15 U.S.C. 1261(q)(1)(A).

B. Surface Temperature Provisions

The thermal provisions of the regulations categorize parts and surfaces of electrical toys (referred to below just as surfaces). Five categories are designated "A" through "E, " and two additional ones, for surfaces marked with a precautionary label, are "Type C marked" and "Type D marked." 16 CFR 1505.6(g)(2). A maximum temperature that may be reached during operation of a toy is specified for each category, depending on the thermal inertia of the surface material. 16 CFR 1505.7.

Type A and B surfaces include handles, knobs, and others associated with grasping, carrying, or lifting. 16 CFR 1505.6(g)(2)(i) and (ii). A Type C surface is one that can be touched by casual contact, without employing the aid of a common household tool (screwdriver, pliers, or other similar household tool) to take the toy apart, and that (a) performs an intended heating function (such as a cooking surface) or (b) is a material heated by the element and intended to be used as a product of the toy (such as the metal mold or plastic beads in a stained glass craft kit, but not certain baking pans, dishes, or other containers). 16 CFR 1505.6(g)(2)(iii). Type D surfaces are accessible surfaces that are not Type A, B, C or E surfaces. 16 CFR 1505.6(g)(2)(v). Type E surfaces are inaccessible or protected by an electrical-thermal safety interlock. 16 CFR 1505.6(g)(20(vii).

Accessibility of Type D and E surfaces (as well as "Type D marked") is defined as "the ability to reach a heated surface with a ¼ inch diameter rod 3 inches long" (referred to below as a probe). 16 CFR 1505.6(g)(2). The 3-inch length of this probe is based on the lengths of children's fingers. Objective accessibility criteria are not specified for other surfaces.

C. Petition

On March 19, 1984 the Toy Manufacturers of America, Inc. (TMA) petitioned the Commission for amendments to the Commission's electrical toy regulations (Petition HP 84–2). The petition expressed concern about the applicability of the regulations to the inside surfaces of toy ovens and requested two changes.

First, the petition requested that a probe be used to determine accessibility of all surfaces instead of only Type D and Type E surfaces. Second, the petition requested that the existing probe be replaced by one with articulated joints and dimensions based on the anthropometry of the fingers and hands of children aged 8 to 12 years.

II. Discussion

The Commission believes that the surface temperature provisions require some clarification:

A. The Probe

Under the existing regulations, accessibility based on the probe is defined as "the ability to reach a heated surface with [the probe]." 16 CFR 1505.6(g)(2). However, this language permits surfaces to be tested for accessibility in at least two different ways. One interpretation of how to use the probe, the method used by Underwriters Laboratories (UL), is to insert it "no more than 3 inches into an opening in a toy." Underwriters Laboratories Standard for Electic Toys, UL 696. Unless the probe contacts a surface within 3 inches of the plane of the oven's opening, that surface is considered not accessible. A second interpretation of how to use the probe is to insert it into an opening as far as it will reach, using the tester's hands and fingers as "extenders."

The first method is reasonably objective, and has been used by UL and by Commission staff for many years. The second method is inherently subjective because it makes accessibility dependent on the length and thickness of a particular tester's fingers and hands.

It is possible that more surfaces would be determined to be accessible under the second method than the first. (Even a tester with large fingers and hands could probably extend the probe further into an opening than three inches.) However, the Commission's engineering and human factors staff believe that the first method provides an acceptable level of safety for children protected by the electrical toy regulations.

The staff judgments are supported by the low risk of injuries associated with currently-available toy ovens and other electrical toys. A search of the Commission's accident data bases, for the years 1978 through 1985, revealed only two burn injuries associated with surfaces on toy ovens. No burn injuries were found to have been associated with surfaces on other electrical toys covered by the regulations.

B. Type C Surfaces

The definition of Type C surfaces is difficult to apply. The first portion of the definition includes surfaces that can be touched by casual contact, and the second portion includes surfaces that can be touched without using common household tools to take the toy apart. The definition lacks objective test criteria for either portion. Since the definition applies to surfaces that can be touched by hands and fingers, it depends on the size and shape of the tester's hands and fingers. In addition, the definition does not make clear whether the household tools would be used to expose otherwise-untouchable surfaces or for some other purpose.

The Commission staff has evaluated the accessibility of Type C surfaces by testing the cooking surfaces of three models of toy ovens. When a technician with small hands tested one of the ovens, its surface could be touched and therefore met the Type C surface definition. When a technician with larger hands tested the same surface, however, it could not be touched by casual contact or without using household tools to take the oven apart. In contrast, using the probe (tested in the UL manner described in section A above) to define Type C surfaces would eliminate this subjectivity.

III. Conclusion

A. Enforcement Policy

Based on the discussion above, the Commission will use the accessibility probe—the rod that is ¼ inch in diameter and 3 inches long—by inserting it no further than 3 inches from the plane of the opening in the toy. The probe will be used to test for accessibility of Type C, C marked, D, D marked, and E surfaces. These clarifications are

embodied by the statements of enforcement policy issued below.

The statements of enforcement policy are interpretive rules or general statements of policy under the Administrative Procedure Act (5 U.S.C. 553). Prior notice, opportunity for public participation, and a delayed effective date are therefore not required.

B. Petition HP 84-2

The TMA petition (HP 84-2) requested (1) that a probe be used to test all surfaces for accessibility and (2) that the existing probe be changed. The Commission agrees with the first request as to Type C and C-marked surfaces, and is clarifying the regulations accordingly. The Commission does not believe the probe should be used to define Type A and B surfaces since their accessibility criteria are sufficiently defined, and is not clarifying those definitions. As to the petition's second request, the Commission believes that its clarification of how to test for accessibility with the existing probe makes unnecessary the development of a new probe.

The petitioner's particular concern was cooking surfaces inside toy ovens. These are Type C surfaces that will now be tested with the probe, in the UL manner. The heating surfaces of all toy ovens currently on the market comply with the regulations under these clarified circumstances. As a result, although the Commission has not formally granted the petition or provided the specific relief requested, the statements of enforcement policy address TMA's concern.

C. Codification

Pursuant to the Federal Hazardous Substances Act, sections 2(q)(1)(A), 2(r), 3(e), 10(a), 74 Stat. 372, 378, 80 Stat. 1303-1304, 83 Stat. 187, 189 (15 U.S.C. 1261, 1262, 1269), and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 573, section 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)), 16 CFR Part 1505 is amended as follows:

PART 1505—[AMENDED]

1. The authority citation for Part 1505 continues to read as follows:

Authority: Secs. 2(f)(1)(D), (r), (s), (t), 3(e)(1), 74 Stat. 372, 375, as amended, 83 Stat. 187-89 (15 U.S.C. 1261, 1262).

§ 1505.6 [Amended]

2. By adding within the parenthetical at the end of § 1505.6(g)(2), introductory text, the phrase, "as described in § 1505.51(a)".

3. By adding at the end of § 1505.6(g)(2)(iii), "(See also § 1505.51(b))".

4. By adding at the end of § 1505.6(g)(2)(iv), "(See also § 1505.51(b))".

5. By adding (to Subpart B) a new § 1505.51 to read as follows:

§ 1505.51 Hot surfaces.

(a) *Test probe.* Section 1505.6(g)(2) defines accessibility, for certain paragraphs, as the ability to reach a heated surface with a ¼-inch-diameter rod 3 inches long. To test for accessibility using this test probe, it shall be inserted no more than 3 inches into any opening in the toy. Unless the probe contacts a surface within 3 inches of the plane of the toy's opening, that surface is not accessible.

(b) *Accessibility of Type C and C-marked surfaces.* Under § 1505.6(g)(2)(iii) and (iv), touching by casual contact or without employing the aid of a common household tool shall be determined by use of the accessibility test probe described in §§ 1505.6(g)(2) and 1505.51(a).

EFFECTIVE DATE: These statements of enforcement policy become effective on September 26, 1986.

Dated: September 18, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-21604 Filed 9-25-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond A. Beirne, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Issued: September 22, 1986.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of October, 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for October 1986, reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Raymond A. Beirne,

Acting Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140

[Calendar year 1986]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.		
Incremental pricing threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514		
NGPA section 102 threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376		
NGPA section 109 threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593		
130 pct of No. 2 fuel oil in New York City threshold	7.370	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020		

[FR Doc. 86-21808 Filed 9-25-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service,

26 CFR Parts 1 and 602

[T.D. 8104]

Capital Gains Tax and Passive Income Tax With Respect to Certain S Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to a tax imposed on capital gains of certain S corporations and a tax imposed on the excess net passive income of certain S corporations that have accumulated earnings and profits from Subchapter C years. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, as amended by the Technical Corrections Act of 1982 and the Tax Reform Act of 1984. The regulations would provide the public with the guidance needed to comply with the law as amended by these Acts.

DATES: The amendments under section 1374 are generally effective for taxable years beginning after December 31, 1982, and the amendments under section 1375 are generally effective for taxable years beginning after 1981.

SUPPLEMENTARY INFORMATION:

Background

Proposed amendments to the Income Tax Regulations (26 CFR Part 1) were published in the **Federal Register** (50 FR 27457) on July 3, 1985. Those amendments were proposed to conform the regulations to section 2 of the Subchapter S Revision Act of 1982 (96 Stat. 1669), as amended by section 305 (d) (3) of the Technical Corrections Act of 1982 (96 Stat. 2400) and sections 102 (d) (1), 474 (r), and 721 (u) and (v) of the Tax Reform Act of 1984 (98 Stat. 623, 844, and 971).

Approximately 4 written comments were received in response to the notice of proposed rulemaking. No public hearing was requested. After consideration of all the public comments, the proposed amendments are adopted as revised by this Treasury decision.

In General

Section 1374 imposes a tax on the capital gains of certain S corporations. The tax is imposed for any taxable year in which the S corporation has a net captial gain in excess of $25,000 for the taxable year if the amount of the net capital gain exceeds 50 percent of the taxable income for such year and the taxable income for such year is in excess of $25,000.

The amount of the tax is generally 28 percent of the amount of the net capital gain in excess of $25,000. However, in no case will the tax imposed by section 1374 on the corporation exceed the tax that would have been imposed by section 11 on the corporation if the corporation were not an S corporation. Section 1374(c) contains exceptions to the tax imposed by section 1374(a) and a special rule in the case of property with a substituted basis. Section 1374 (d) and § 1.1374-1A (d) define the term "taxable income" for purposes of section 1374.

Section 1375 imposes a tax on the excess net passive income of certain S corporations that have Subchapter C earnings and profits. This tax can generally be avoided by the corporation distributing its Subchapter C earnings and profits before the close of the taxable year. The tax is computed by multiplying the excess net passive income by the highest rate of tax specified in section 11 (b). Section 1375 (b) and § 1.1375-1A (b) define the term "excess net passive income." A special rule contained in section 1375 (c) ensures that a net capital gain that is taken into account under section 1375 in computing the passive income tax will not also be taken into account in determining the capital gains under section 1374. Section 1375(d) provides that the tax imposed by section 1375 may be waived in certain limited cases where an S corporation determined in good faith that it has no Subchapter C earnings and profits at the end of a taxable year and it is later determined that it did have such earnings and profits. Section 1.1375-1A(d) provides rules concerning this waiver.

Public Comments and Changes in Response to Public Comments

Several comments suggested minor technical refinements to the proposed rules. Other comments asked for additional guidance to clarify certain of the proposed rules. In general, the suggested changes have been made.

One of the changes made deals with the procedure for requesting a waiver of the tax imposed by section 1375. The final regulations provide that the request for waiver should be made to the district director rather than in the form of a ruling request to the National Office.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these final regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.1361-0A—1.1388-1

Income taxes, Small business, S corporation, Electing small business corporation, Cooperatives.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

§§ 1.1361-1 through 1.1361-16 [Removed]

Par. 2. Sections 1.1361-1 through 1.1361-16 are removed.

Par. 3. There are inserted immediately after § 1.1348-3 the following new §§ 1.1361-0A, 1.1374-1A, and 1.1375-1A to read as follows:

§ 1.1361-0A Effective date.

(a) Except as otherwise provided in the regulations, the provisions of §§ 1.1374-1A and 1.1375-1A apply to taxable years beginning after December 31, 1982.

(b) The provisions of §§ 1.1371-1 through 1.1378-3 apply to a qualified casualty insurance electing small business corporation and to a qualified oil corporation for taxable years beginning after December 31, 1982, and the provisions of §§ 1.1374-1A and 1.1375-1A shall not apply. See section 6(c)(2), (3), and (4) of the Subchapter S Revision Act of 1982.

§ 1.1374-1A Tax imposed on certain capital gains.

(a) *General rule.* Execpt as otherwise provided in paragraph (c) of this section, if for a taxable year beginning after 1982 of an S corporation—

(1) The net capital gain of such corporation exceeds $25,000, and

(2) The net capital gain of such corporation exceeds 50 percent of its taxable income (as defined in paragraph (d) of this section) for such year, and

(3) The taxable income of such corporation (as defined in paragraph (d) of this section) for such year exceeds $25,000,

section 1374 imposes a tax (computed under paragraph (b) of this section) on the income of such corporation. The tax is imposed on the S corporation and not on the shareholders.

(b) *Amount of tax.* The amount of tax shall be the lower of—

(1) An amount equal to the tax, determined as provided in section 1201(a)(2), on the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or

(2) An amount equal to the tax which would be imposed by section 11 on the taxable income of the corporation (as defined in paragraph (d) of this section) for the taxable year were it not an S corporation.

No credit shall be allowable under Part IV of Subchapter A of Chapter 1 of the Internal Revenue Code of 1954 (other than under section 34) against the tax imposed by section 1374(a) and this section, See section 1375(c)(2) and § 1.1375-1A(c)(2) for a special rule that reduces the amount of the net capital gain of the corporation for purposes of this paragraph (b) in cases where a net capital gain is taxed as excess net passive income under section 1375. See section 1374(c)(3) and paragraph (c)(1)(ii) of this section for a special rule that limits the amount of tax on property with a substituted basis in certain cases.

(c) *Exceptions to taxation*—(1) *New corporations and corporations with election in effect for 3 immediately preceding years*—(i) *In general.* If an S corpooration would be subject to the tax imposed by section 1374 for a taxable year pursuant to paragraph (a) of this section, the corporation shall, nevertheless, not be subject to such tax for such year, if:

(A) The election under section 1362(a) which is in effect with respect to such corporation for such year has been in effect for the corporation's three immediately preceding taxable years, or

(B) An election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years for which it has been in existence, unless there is a net capital gain for the taxable year which is attributable to property with a substituted basis within the meaning of paragraph (c)(1)(iii) of this section.

(ii) *Amount ot tax on net capital gain attributable to property with a substituted basis.* If for a taxable year of an S corporation either paragraph (c)(1)(i) (A) or (B) of this section is satisfied, but the S corporation has a net capital gain for such taxable year which is attributable to property with a substituted basis (within the meaning of paragraph (c)(1)(iii) of this section), then paragraph (a) of this section shall apply for the taxable year, but the amount of tax determined under paragraph (b) of this section shall not exceed a tax, determined as provided in section 1201 (a), on the net capital gain attributable to property with a substituted basis.

(iii) *Property with substituted basis.* For purposes of this section, the term "property with a substituted basis" means:

(A) Property acquired by a corporation ("the acquiring corporation") during the period beginning 36 months before the first day of the acquiring corporation's taxable year and ending on the last day of such year;

(B) The basis of such property in the hands of the acquiring corporation is determined in whole or in part by reference to the basis of any property in the hands of another corporation; and

(C) Such other corporation was not an S corporation throughout the period beginning the later of:

(1) 36 months before the first day of the acquiring corporation's taxable year, or

(2) The time such other corporation came into existence,

and ending on the date such other corporation transferred the property, the basis of which is used to determine, in whole or in part, the basis of the property in the hands of the acquiring corporation. An S corporation and any predecessor corporation shall not be treated as one corporation for purposes of this paragraph (c) (1).

(iv) *Existence of a corporation.* For purposes of this section, a corporation. shall not be considered to be in existence for any month which precedes the first month in which such corporation has shareholders or acquires assets or begins business, whichever is first to occur.

(v) *References to prior law included.* For purposes of this paragraph (c), the term "S corporation" shall include an electing small business corporation

under prior Subchapter S law, and the term "election under section 1362 (a)" shall include an election under section 1372 of prior Subchapter S law.

(iv) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). M Corporation was organized and began business in 1977. M subsequently made an election under section 1362 (a) which was effective for its 1984 taxable year. If such election does not terminate under section 1362 for its taxable years 1984, 1985, and 1986, M is not subject to the tax imposed by section 1374 for its taxable year 1987, or for any subsequent year for which such election remains in effect, unless it has, for any such year, an excess of net long-term capital gain over net short-term capital loss attributable to property with a substituted basis. If there is such an excess for any such year, and the requiremens of paragraph (a) of this section are met, M will be subject to the tax for such year. If there is no such excess for any year after 1986, M will not be subject to the tax for any such year even though the requirements of paragraph (a) of this section are met.

Example (2). N corporation was organized in 1983, and was an S corporation for its first taxable year, N is not subject to the tax imposed by section 1374 for 1983, or for any subsequent year for which its orginal election under section 1362 (a) has not terminated under section 1362(d), unless, for any such year, it has an excess of net long-term capital gain over net short-term capital loss attributable to property with a substituted basis and the requirements of paragraph (a) of this section are met.

(2) *Treatment of certain gains of options and commodities dealers*—(i) *Exclusion of certain capital gains.* For purposes of this section, the net capital gain of any options dealer or commodities dealer shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

(ii). *Definitions.* For purposes of this paragraph (c)(2)—

(A) *Options dealer.* The term "options dealer" has the meaning given to such term by section 1256(g)(8).

(B) *Commodities dealer.* The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) *Section 1256 contracts.* The term "section 1256 contracts" has the meaning given to such term by section 1256(b).

(iii) *Effective dates*—(A) *In general.* Except as otherwise provided in this paragraph (c)(2)(iii), this paragraph (c)(2) shall apply to positions established after July 18, 1984, in taxable years ending after such date.

(B) *Special rule for options on regulated futures contracts.* In the case of any option with respect to a regulated futures contract (within the meaning of section 1256), this paragraph (c)(2) shall apply to positions established after October 31, 1983, in taxable years ending after such date.

(c) *Elections with respect to property held on or before July 18, 1984.* See §§ 1.1256 (h)–1T and 1.1256(h)–2T for rules concerning an election to have this paragraph (c)(2) apply to certain property held on or before July 18, 1984.

(d) *Determination of taxable income*—(1) *General rule.* For purposes of this section, taxable income of the corporation shall be determined under section 63(a) as if the corporation were a C corporation rather than an S corporation, except that the following deductions shall not apply in the computation—

(i) The deduction allowed by section 172 (relating to net operating loss deduction), and

(ii) The deductions allowed by Part VIII of Subchapter B (other than the deduction allowed by section 248, relating to organization expenditures).

For any taxable year in which a tax under this section is imposed on an S corporation, the S corporation shall attach a Form 1120 completed in accordance with this paragraph (d) and instructions to Form 1120S to its tax return filed for such taxable year

(2) *Special rule for net capital gains taxed as excess net passive income under section 1375.* See section 1375 (c) (2) and § 1.1375–1A(c)(2) for a special rule that reduces the taxable income of the corporation for purposes of section 1374(b)(2) and § 1.1374–1A(b)(2) in cases where a net capital gain is taxed as excess net passive income under section 1375.

(e) *Reduction in pass-thru for tax imposed on capital gain.* See section 1366(f)(2) for a special rule reducing the S corporation's long-term capital gains and the corporation's gain from sales or exchanges of property described in section 1231 for purposes of section 1366(a) by an amount of tax imposed under section 1374 and this section.

(f) *Examples.* The following examples illustrate the principles of this section and assume that a tax will not be imposed under section 1375:

Example (1). Corporation M is an S corporation for its taxable year beginning January 1, 1983. For 1983, M has an excess of net long-term capital gain over net short-term capital loss in the amount of $30,000. However, its taxable income for the year is only $20,000 as a result of other deductions in excess of other income. Thus, although the excess of the net long-term capital gain over the net short-term capital loss exceeds $25,000 and also exceeds 50 percent of taxable income, M is not subject to the tax imposed by section 1374 for 1983 because its taxable income does not exceed $25,000.

Example (2). Corporation N is an S Corporation for its 1983 taxable year. For 1983, N has an excess of net long-term capital gain over net short-term capital loss in the amount of $30,000, and taxable income of $65,000. Thus, although N's net capital gain ($30,000) exceeds $25,000, it does not exceed 50 percent of the corporation's taxable income for the year (50 percent of $65,000, or $32,500), and therefore N is not subject to the tax imposed by section 1374 for such year.

Example (3). Assume that Corporation O, an S corporation, is subject to the tax imposed by section 1374 for its taxable year 1983. For 1983, O has an excess of net long-term capital gain over net short-term capital loss in the amount of $73,000, and taxable income within the meaning of section 1374, which includes capital gains and losses, of $100,000. The amount of tax computed under paragraph (b)(1) of this section is 28 percent of $48.00 ($73,000—$25,000), or $13,440. Since this is lower than the amount computed under paragraph (b)(2) of this section, which is $25,750 ($3,750+$4,500+$7,500+$10,000), $13,440 is the amount of tax imposed by section 1374.

Example (4). Assume that in example (3) the taxable income of O for 1983 is $35,000. This results from an excess of deductions over income with respect to items which were not included in determining the excess of the net long-term capital gain over the net short-term capital loss. In such case, the amount of tax, computed under paragraph (b)(2) of this section, is $5,550. Since this is lower than the amount computed under paragraph (b)(1) of this section, $5,550 is the amount of tax imposed by section 1374.

Example (5). Corporation P, an S corporation, for its taxable year 1983 has an excess of net long-term capital gain over net short-term capital loss in the amount of $65,000 and has taxable income of $80,000. P's election under section 1362 has been in effect for its three immediately preceding taxable years, but P, nevertheless, is subject to the tax imposed by section 1374 for 1983 since it has an excess of net long-term capital gain over net short-term capital loss (in the amount of $20,000) attributable to property with a substituted basis. The tax computed under paragraph (b)(1) of this section, $11,200 (28 percent of $40,000 ($65,000—$25,000)), is less than the tax computed under paragraph (b)(2) of this section, $17,750. However, under the limitation provided in paragraph (c) of this section which is applicable in this factual situation, the tax imposed by section 1374 for 1983 may not exceed $5,600 (28 percent of $20,000, the excess of net long-term capital gain over net short-term capital loss attributable to property with a substituted basis).

§ 1.1375–1A Tax imposed when passive investment income of corporation having Subchapter C earnings and profits exceed 25 percent of gross receipts.

(a) *General rule.* For taxable years beginning after 1981, section 1375(a) imposes a tax on the income of certain S corporations that have passive investment income. In the case of a taxable year beginning during 1982, an electing small business corporation may elect to have the rules under this section not apply. See the regulations under section 1362 for rules on the election. For purposes of this section, the term "S corporation" shall include an electing small business corporation under prior law. This tax shall apply to an S corporation for a taxable year if the S corporation has—

(1) Subchapter C earnings and profits at the close of such taxable year, and

(2) Gross receipts more than 25 percent of which are passive investment income.

If the S corporation has no Subchapter C earnings and profits at the close of the taxable year (because, for example, such earnings and profits were distributed in accordance with section 1368), the tax shall not be imposed even though the S corporation has passive investment income for the taxable year. If the tax is imposed, the tax shall be computed by multiplying the excess net passive income (as defined in paragraph (b) of this section) by the highest rate of tax specified in section 11(b).

(b) *Definitions*—(1) *Excess net passive income.*—(i) *In general.* The term "excess net passive income" is defined in section 1375(b)(1), and can be expressed by the following formula:

$$ENPI = NPI \times \frac{PII - (.25 \times GR)}{PII}$$

Where:
ENPI = excess net passive income
NPI = net passive income
PII = passive investment income
GR = total gross receipts

(ii) *Limitation.* The amount of the excess net passive income for any taxable year shall not exceed the corporation's taxable income for the taxable year (determined in accordance with section 1374(d) and § 1.1374–1A(d)).

(2) *Net passive income.* The term "net passive income" means—

(i) Passive investment income, reduced by

(ii) The deductions allowable under Chapter 1 of the Internal Revenue Code of 1954 which are directly connected (within the meaning of paragraph (b)(3) of this section) with the production of such income (other than deductions allowable under section 172 and Part VIII of Subchapter B).

(3) *Directly connected*—(i) *In general.* For purposes of paragraph (b)(2)(ii) of this section to be directly connected with the production of income, an item of deduction must have proximate and primary relationship to the income. Expenses, depreciation, and similar items attributable solely to such income qualify for deduction.

(ii) *Allocation of deduction.* If an item of deduction is attributable (within the meaning of paragraph (b)(3)(i) of this section) inpart to passive investment income and in part to income other than passive investment income, the deduction shall be allocated between the two types of items on a reasonable basis. The portion of any deduction so allocated to passive investment income shall be treated as proximately and primarily related to such income.

(4) *Other definitions.* The terms "subchapter C earnings and profits," "passive investment income," and "gross receipts" shall have the same meaning given these terms in section 1362(d)(3) and the regulations thereunder.

(c) *Special rules*—(1) *Disallowance of credits.* No credit is allowed under Part IV of Subchapter A of Chapter 1 of the Code (other than section 34) against the tax imposed by section 1375(a) and this section.

(2) *Coordination with section 1374.* If any gain—

(i) Is taken into account in determining passive income for purposes of this section, and

(ii) Is taken into account under section 1374.

the amount of such gain taken into account under section 1374(b) and § 1.1374–1A(b) (1) and (2) in determining the amount of tax shall be reduced by the portion of the excess net passive income for the taxable year which is attributable (on a pro rata basis) to such gain. For purposes of the preceding sentence, the portion of excess net passive income for the taxable year which is attributable to such capital gain is equal to the amount determined by multiplying the excess net passive income by the following fraction:

$$\frac{NCG - E}{NPI}$$

Where:
NCG = net capital gain
NPI = net passive income.

E = Expense attributable to net capital gain.

(d) *Waiver of tax in certain cases*—(1) *In general.* If an S corporation establishes to the satisfaction of the Commissioner that—

(i) It determined in good faith that it had no Subchapter C earnings and profits at the close of the taxable year, and

(ii) During a reasonable period of time after it was determined that it did have Subchapter C earnings and profits at the close of such taxable year such earnings and profits were distributed.

the Commissioner may waive the tax imposed by section 1375 for such taxable year. The S corporation has the burden of establishing that under the relevant facts and circumsances the Commissioner should waive the tax.

For example, if an S corporation establishes that in good faith and using due diligence it determined that it had no Subchapter C earnings and profits at the close of a taxable year, but it was later determined on audit that it did have Subchapter C earnings and profits at the close of such taxable year, and if the corporation establishes that it distributed such earnings and profits within a reasonable time after the audit, it may be appropriate for the Commissioner to waive the tax on passive income for such taxable year.

(2) *Corporation's request for a waiver.* A request for waiver of the tax imposed by section 1375 shall be made in writing to the district director request and shall contain all relevant facts to establish that the requirements of paragraph (d)(1) of this section are met. Such request shall contain a description of how and on what date the S corporation in good faith and using due diligence determined that it had no Subchapter C earnings and profits at the close of the taxable year, a description of how and on what date it was determined that the S corporation had Subchapter C earnings and profits at the close of the year and a description (including dates) of any steps taken to distribute such earnings and profits. If the earnings and profits have not yet been distributed, the request shall contain a timetable for distribution and an explanation of why such timetable is reasonable. On the date the waiver is to become effective, all Subchapter C earnings and profits must have been distributed.

(e) *Reduction in pass-thru for tax imposed on excess net passive income.* See section 1366(f)(3) for a special rule reducing each item of the corporation's passive investment income for purposes of section 1366(a) if a tax is imposed on the corporation under section 1375.

Examples. The following example illustrates the principles of this section:

Example (1). Assume Corporation M, an S corporation, has for its taxable year total gross receipts of $200,000, passive investment income of $100,000, $60,000 of which is interest income, and expenses directly connected with the production of such interest income in the amount of $10,000. Assume also that at the end of the taxable year Corporation M has Subchapter C earnings and profits. Since more than 25 percent of the Corporation M's total gross receipts are passive investment income, and since Corporation M has Subchapter C earnings and profits at the end of the taxable year, Corporation M will be subject to the tax imposed by section 1375. The amount of excess net passive investment income is $45,000 ($90,000×(50,000/100,000)). Assume that the other $40,000 of passive investment income is attributable to net capital gain and that there are no expenses directly connected with such gain. Under these facts, $20,000 of the excess net passive income is attributable to the net capital gain ($45,000×($40,000/$90,000)). Accordingly, the amount of gain taken into account under section 1374(b)(1) and the taxable income of Corporation M under section 1374(b)(2) shall be reduced by $20,000.

PART 602—[AMENDED]

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table

"§ 1.1374-1A (d) . . . 1545-0130".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 3, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-21723 Filed 9-25-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. AFT-235; Ref. Notice No. 588]

Establishment of Arkansas Mountain Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in the State of Arkansas to be known as "Arkansas Mountain." This decision is the result of a petition submitted by Mr. Al Wiederkehr, a winery owner and grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Mr. Al Wiederkehr, Chairman of the Board and Chief Executive Officer of Wiederkehr Wine Cellars, Inc., proposing an area in northwestern Arkansas as a viticultural area to be known as "Arkansas Mountain." The area contains about 4,500 square miles. Within the area, approximately 1,200 acres are currently planted to grapes. The area is located in the mountainous region of Arkansas, both north and south of the Arkansas River. There are six bonded wineries or bonded wine cellars authorized to operate within the area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 588, in the **Federal Register** on Monday, April 7, 1986 (51 FR 11753). That notice proposed establishment of the "Arkansas Mountain" viticultural area and solicited public comment concerning the proposal.

No comments have been received. Therefore, this document establishes the "Arkansas Mountain" viticultural area with boundaries as proposed in Notice No. 588.

Name of the Area

The following evidence, submitted by the petitioner, establishes that the new viticultural area is known by the name of "Arkansas Mountain":

(a) The name "Arkansas Mountain" has been used on wine labels by the petitioner to designate wines from this area since 1974.

(b) Published descriptions of the area have referred to it as the "Arkansas Mountains." For example, the "Holiday Inn Magazine for Travelers," in an October 1969 article entitled "Vineyard Village," stated: "Finding the grape-laden vineyards, a colorful chalet with gay window boxes, and huge wine cellars in the Arkansas mountains is an unexpected adventure to most tourists. Yet the colony has been there for more than 80 years." Further, the Rev. Placidus Oechsle, in his *Historical Sketch of the Congregation of Our Lady of Perpetual Help* (1930), wrote as follows: "The Baron . . . praised the thrifty and industrious settlers of Teutonic blood, who had made in a few years a garden spot of a wilderness. They had selected the Arkansas Mountains . . . to become their home."

(c) The origin of the term "Arkansas Mountain" was described by the petitioner as follows: "Dr. John L. Ferguson states the following information in reference to the Arkansas Mountains. The name Arkansas came before Ozark or 'Aux Arcs' which means of the Arkansas or from among the Arkansas. The name Arkansas comes from the Arkansas Indians who lived in the area. The Arkansas River was given its name to indicate that it was the river of the Arkansas (Indians); therefore the Arkansas River. The mountains in the vicinity of the Arkansas River were also given that name to mean also the mountains of the Arkansas (Indians); therefore the Arkansas Mountains."

Geography of the Area

The following evidence establishes that the new viticultural area is distinguished geographically from its surrounding areas:

(a) To the north and west, the area is distinguished from neighboring areas on the basis of mean winter minimum temperature. The petitioner submitted data collected over 50 years from 42 locations (7 inside the area and 35 outside of it). The data showed that

locations to the north and west of the area regularly experience significantly colder mean winter minimum temperatures. According to Professor Justin R. Morris of the University of Arkansas Division of Agriculture, this distinction "is due to the effects of the mountains." The protective effects of the Arkansas mountains were described by the petitioner, quoting at length from *Natural Resources of the State of Arkansas* (1869) by James M. Lewis. In that book, Mr. Lewis claimed that protection from cold northern weather is due to the fact that the Ozark and Ouachita Mountains range east and west, rather than north and south (as within the Appalachians, for example). Consequently, Mr. Lewis said, the mountains provide shelter from violent winds and sudden changes in temperature coming from the north.

(b) To the east, the data is ambiguous as to the existence of a temperature difference as described above. However, the eastern boundary does correspond approximately to a topographical change, where the Boston and Ouachita Mountains begin their descent to the alluvial plain of the Mississippi River. This topographical change is reflected in a change in the character of the soil; for instance, the Leadville-Taft soils begin to occur much more frequently; and, within the Linker and Mountainburg soils, there is an increasing predominance of the Linker variety and a corresponding drop-off in the Mountainburg.

(c) To the south, the boundary of the area delineates the extent of "soil types suitable for grape production" (according to Professor Morris). Additionally, Professor Morris stated, "All areas south of the Arkansas Mountain area would be considered in the Pierce's disease region and in these areas, the *Vitis rotundifolia* are best adapted since they are resistant or tolerant to Pierce's disease." Pierce's disease is a vine-destroying disease, associated with warm climates, which attacks vines of the *Vitis vinifera* species (the species from which most of the world's wines are produced). *Vitis vinifera* is grown in the Arksnsas Mountain area, but has not been grown successfully in the region to the south of it.

Boundaries of the Area

The boundaries of the new viticultural area are found on two U.S.G.S maps in the scale of 1:250,000, titled Russellville, Arkansas, and Fort Smith, Arkansas-Oklahoma. The boundaries are as described in new § 9.112, which is added to regulations by this Treasury decision.

The "Arkansas Mountain" boundaries entirely enclose the approved "Altus" viticultural area. Further, the "Arkansas Mountain" area is itself entirely enclosed within the approved "Ozark Mountain" area. In establishing a viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a large viticultural area to contain approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Miscellaneous

ATF does not want to give the impression by approving "Arkansas Mountain" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Arkansas Mountain" wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this final rule is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.112, to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.112 Arkansas Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.112, which reads as follows:

§ 9.112 Arkansas Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Arkansas Mountain."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Arkansas Mountain viticultural area are two U.S.G.S. maps, titled:

(1) Russellville, Arkansas, 1:250,000 series compiled in 1954.

(2) Fort Smith, Arkansas-Oklahoma, 1:250,000 series, 1978.

(c) *Boundary*—(1) *General.* The Arkansas Mountain viticultural area is located in northwestern Arkansas. Starting at the point where Frog Bayou converges with the Arkansas River, near

Yoestown, Arkansas (or the Fort Smith map), the boundary proceeds:

(2) *Boundary Description.* (i) Southwestward along the Arkansas River to Vache Grasse Creek.

(ii) Then southeastward and southwestward following Vache Grasse Creek to the place where it is crossed by Arkansas Highway 10, near Greenwood, Arkansas.

(iii) From there westward along Highway 10 to U.S. Highway 71. (Note: Highway 10 is the primary highway leading to Greenwood to Hackett, Arkansas.)

(iv) Then southward and eastward along Highway 71 until it crosses Rock Creek.

(v) Then northeastward along Rock Creek to Petit Jean Creek.

(vi) Then generally northeastward and eastward along Petit Jean Creek until it becomes the Petit Jean River (on the Russellville map).

(vii) Then generally eastward along the Petit Jean River, flowing through Blue Mountain Lake, until the Petit Jean River joins the Arkansas River.

(viii) Then generally eastward along the Arkansas River to Cadron Creek.

(ix) Then generally northward and northeastward along Cadron Creek to the place where it is crossed by U.S. Highway 65.

(x) From there northward along Highway 65 to its intersection with Arkansas Highway 16 near Clinton, Arkansas.

(xi) From there following Highway 16 generally westward to its intersection with Arkansas Highway 23 in Brashears, Arkansas.

(xii) From there southward along Highway 23 to the Madison County-Franklin County line.

(xiii) Then westward and southward along that county line to the Madison County-Crawford County line.

(xiv) Then westward along that county line to the Washington County-Crawford County line.

(xv) Then westward along that county line to Jones Fork (on the Fort Smith map).

(xvi) Then southward along Jones Fork until it joins Frog Bayou near Winfrey, Arkansas.

(xvii) Then generally southward along Frog Bayou, flowing through Lake Shepherd Springs and Lake Fort Smith, to the starting point.

Signed: August 15, 1986.

Stephen E. Higgins,

Director.

Approved: September 8, 1986.

Michael H. Lane,

Deputy Assistant Secretary (Regulatory, Trade, and Tariff Enforcement)

[FR Doc. 86-21850 Filed 9-25-86; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-020]

Indiana State Plan; Final Approval Determination

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final State plan approval.

SUMMARY: This document amends Subpart Z of 29 CFR Part 1952 to reflect the Assistant Secretary's decision granting final approval to the Indiana State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Indiana plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector and private-sector hazardous-waste disposal facilities designated as Superfund sites. Federal jurisdiction remains in effect with respect to Federal Government employers and employees.

EFFECTIVE DATE: September 26, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of a least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues

covered by the plan. 29 U.S.C. 667(e). To enable OSHA to evaluate State performance in relation to the foregoing criteria, State participation in OSHA's computerized Integrated Management Information System is required.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1978 court order by the U.S. District Court for the District of Columbia (*AFL-CIO* v. *Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan state the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the Indiana Plan and Its Compliance Staffing Benchmarks

Indiana Plan

On December 21, 1972, Indiana submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on April 23, 1973, a notice was published in the **Federal Register** (38 FR 10049) concerning submission of the plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan.

Comments in response to the April 23, 1972, **Federal Register** notice were received from: the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) Standing Committee on Safety and Occupational Health; Indiana State AFL-CIO; Lake and Porter Counties AFL-CIO; United Steelworkers of America, Local 1066; United Steelworkers of America, Local 1014; United Steelworkers of America, Local 6787; Allied Industrial Workers of America; AFL-CIO District 31, Local 3008; United Auto Workers, Local 1122; Hoosier Air Transport, Local Lodge 2294; International Association of Machinists, Lincoln Lodge 209; Oil, Chemical and Atomic Workers, Local 7-1; the Indiana Chamber of Commerce; the Indiana Manufacturers Association; United States Steel Corporation; and Miles Laboratories. In addition to the comments, an informal hearing was requested. In response to these comments and questions raised by OSHA, Indiana made many significant modifications to the plan.

Consequently, the Assistant Secretary found it appropriate to afford an additional opportunity for public comment on the modifications to the plan (38 FR 26837; September 26, 1973). Comments on the plan's modifications were received from: the AFL-CIO Standing Committee on Safety and Occupational Health; the Indiana State AFL-CIO; Lake and Porter Counties AFL-CIO; United Steelworkers of America, Local 1066; United Steelworkers of America Safety and Health Department; United Steelworkers of America District 31, Subdistrict 2; Allied Industrial Workers of America; The United Paperworkers International Union; Indiana Chamber of Commerce; the Indiana Manufacturers Association; AMOS Inc.; and the Migrant Legal Reform and Rural Development Project. Requests for an informal hearing were made by: the AFL-CIO Standing Committee on Safety and Occupational Health; the Indiana State AFL-CIO; and the Allied Industrial Workers of America.

In further response to expressed concerns, the Governor submitted a letter of assurance to the Assistant Secretary indicating that the State's supplemental operating budget, containing an additional appropriation for the Division of Labor, would be introduced in the 1974 Indiana General Assembly. The supplemental budget, as passed in 1974, ensured an increase in inspectors under the plan during the first year of operation.

As there were no significant objections which were outstanding to the plan, as amended, all requests for a public hearing were denied.

On March 6, 1974, the Assistant Secretary published a notice granting initial approval of the Indiana plan as a developmental plan under section 18(b) of the Act (39 FR 8611). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The plan covers all issues except private-sector maritime employment and private-sector hazardous waste disposal facilities designated as Superfund sites. The Indiana Department of Labor is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the Administrator of Indiana OSHA (IOSHA).

The plan provides for the adoption by Indiana of all Federal occupational safety and health standards contained in 29 CFR Parts 1910, 1926, and 1928, and the legislation provides for the adoption of future Federal standards after public hearings. The plan requires employers to furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalties are heard by the Indiana Board of Safety Review. Decisions of the Indiana Board of Safety Review may be appealed to the appropriate State District Court.

The notice of initial approval noted a few distinctions between the Federal and Indiana program. The review system for contested enforcement actions is two-tiered in that (1) contests result in automatic informal review by the Commissioner of Labor with (2) further contest and review by the Board of Safety Review. The State public-sector plan provides for an employer's self-inspection program. The public-sector self-inspection program was subsequently limited by IOSHA to those agencies employing a full-time, professional Safety Director; and in those agencies, IOSHA will conduct general schedule inspections, monitoring visits, investigations of fatalities and catastrophes, as well as respond to employee complaints where the employee is dissatisfied with the Safety Director's handling of his or her complaint. Monetary penalties are not included in the public sector program.

The Assistant Secretary's initial approval of the Indiana developmental plan, a general description of the plan, a schedule of required developmental steps and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart Z; 39 FR 8611 (March 6, 1974)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropiate documentation submitted for OSHA approval during the three-year period ending February 25, 1977. These "developmental steps" included submission of a State poster; amendments to the Indiana Occupational Safety and Health Act; submission of documentation outlining

training and refresher courses for State compliance staff; submission of documentation showing that Indiana had substantially met its initial compliance staffing commitments; development of an occupational safety and health program for public employees, an revision thereto with implementing regulations; promulgation of rules for on-site consultation; submission of a compliance operations manual and a revised Industrial Hygiene Manual; promulgation of regulations for inspections, safety orders, and proposed penalties parallel to 29 CFR Part 1903; promulgation or regulations for recordkeeping and reporting of occupational injuries and illnesses parallel to 29 CFR Part 1904, including revised recordkeeping and reporting provisions for the public sector; promulgation of rules for variances, limitations, variations, tolerances, and exemptions, parallel to 29 CFR Part 1905; adoption of rules of procedure for the Board of Safety Review; deletion of coverage of the maritime and longshoring issues from its plan; and submission of documentation on establishment of a Management Information System. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The subpart of 29 CFR Part 1952 designated as relating to Indiana was amended to reflect each of these approval determinations (see 29 CFR 1952.322).

On September 24, 1981, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Indiana had satisfactorily completed all developmental steps (41 FR 49120). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the plan—to be at least as effective as corresponding Federal provisions. Certification does not entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On December 23, 1977, OSHA published notice in the **Federal Register** (42 FR 64464) requesting public comment on a petition the Agency received requesting withdrawal of OSHA approval of the State plan. The petition was submitted by the President of the Indiana State AFL–CIO and the AFL–CIO Standing Committee on Occupational Safety and Health. The United Steelworkers of America subsequently joined the AFL–CIO in its petition. The petition alleged a failure by the State to adopt required provisions by statute or regulation, a lack of compliance with substantial provisions of the plan, deficiencies in performance as compared with Federal OSHA, and, particularly, a failure to provide an adequate health program.

OSHA's initial consideration of the petition and the agency's investigation of the allegations resulted in the January 16, 1981, publication of a notice of initiation of plan withdrawal proceeding and of a 30-day period for State response to the issues (46 FR 3919). However, based on a reconsideration of OSHA's investigation findings and a determination that the evidence therein was out-dated and did not reflect current State performance, as well as on a substantial increase by the State in the number of health compliance staff, the agency published notice on March 27, 1981 (46 FR 19000), of its decision to withdraw the complaint initiating the withdrawal of the Indiana State plan.

Although OSHA had not previously entered into an operational status agreement with Indiana, in 1981 OSHA determined that such agreements should be concluded with all qualified States. Thus, a **Federal Register** notice was published on June 11, 1982 (47 FR 25324), announcing that an operational status agreement had been signed on May 18, 1981, for Indiana. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Indiana plan.

On October 6, 1981, OSHA published notice (46 FR 49116) of its approval of amendments to the Indiana Occupational Safety and Health Act (IOSHA Act) which were enacted subsequent to initial approval. These amendments included provision of specific authority for an on-site consultation program, broadening of the definition of the term "employment" to include certain non-paid employees, provision that the Commissioner of Labor or his designee may enter without delay to inspect places of employment, requirement that inspectors consult with a reasonable number of employees where there is no authorized employee representative, and requirement for issuance of a failure to correct notice where a previously cited standard violation has not been abated. An additional amendment to the IOSHA Act was signed by the Governor in 1983 providing that IOSHA may not adopt or enforce provisions more stringent than corresponding Federal provisions. Also in 1983, the Industrial Hygiene Division, which formerly was located in the State Board of Health, and whose services were provided to the State plan through an interagency agreement, was transferred to the State Department of Labor, thereby giving the State plan administrator exclusive control of both the occupational safety and health programs.

Indiana Benchmarks

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, to calculate for each State plan State the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Indiana to allocate 81 safety compliance officers and 140 industrial hygienists to conduct inspections under the plan.

In September 1984 the Indiana State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Indiana. Pursuant to an initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, Indiana reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised compliance staffing benchmarks of 47 safety and 23 health compliance officers. After the opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On May 19, 1986, OSHA published notice (51 FR 18337) of the eligibility of the Indiana State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted. The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Integrated Management Information System, and staffing which meets the State staffing benchmarks.

The May 19 **Federal Register** notice set forth a general description of the Indiana plan and summarized the results of Federal OSHA monitoring of State operations during the period from March 1984 through December 1985. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Indiana operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the March 1984–December 1985 Evaluation Report of the Indiana plan ("18(e) Evaluation Report"), which was extensively summarized in the May 19 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the record (Ex. 12). Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record (Ex. 11).

To assist and encourage public participation in the 18(e) determination process, copies of the complete record were maintained in the OSHA Docket Office in Washington, DC, in the OSHA Region V Office in Chicago, Illinois, and in the office of the Indiana Department of Labor in Indianapolis, Indiana. A summary of the May 19 proposal, with an invitation for public comments, was published in Indiana on May 22 (Ex. 14).

The May 19 proposal invited interested persons to submit, by June 23 (51 FR 18337), written comments and views regarding the Indiana plan, and whether final approval should be granted. An opportunity to request a public hearing also was provided. Three letters of comment were received in response to this notice: One from Robert W. Hargate, Chairman of the Safety Committee of the Associated General Contractors of Indiana, and two from John S. Morawetz, Safety and Health Director of the International Molders and Allied Workers Union (who also requested a hearing but subsequently withdrew that request).

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Indiana plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration.

The June 9 comment submitted by Robert W. Hargate (Ex. 15–1), Chairman of the Safety Committee of the Associated General Contractors (AGC) of Indiana, supported final approval of the Indiana plan and expressed the Association's view that IOSHA has been very effective in the construction industry in the State, with a measurable increase in inspections, citations and penalties over the last several years. AGC further commented that 13 of its 49 members had experienced perfect jobsite safety records for one year, a fact AGC attributes to IOSHA's increased activity and the Association's promotion of safety awareness.

The June 18 comment submitted by John Morawetz (Ex. 15–2), Safety and Health Director of the International Molders and Allied Workers Union, expressed concern about the results of two specific IOSHA inspections (on which the Union had submitted Complaints About State Program Administration (CASPA's) to OSHA) and two structural aspects of the State plan (records retention policy and a legislative amendment that IOSHA provisions could not be more stringent than OSHA's. Mr. Morawetz also requested OSHA to hold an informal public hearing.

Mr. Morawetz subsequently submitted to the docket, for inclusion in the record for the 18(e) proceeding, a copy of a July 17 letter (Ex. 15–3) he sent to Indiana Labor Commissioner Robert McCreary summarizing understandings reached on his concerns at a meeting with Commissioner McCreary, and withdrawing his hearing request.

Mr. Morawetz's original concerns about the first IOSHA inspection cited in his June 18 letter (Ex. 15–2) centered on the appropriateness of IOSHA's findings in response to an accident investigation at an Indiana foundry whose workers are represented by the Molders Union. The Union submitted a CASPA on this case because it believed that, since there was no specific standard addressing the allegedly hazardous condition that caused the accident, the foundry should have been cited for a violation of IOSHA's general duty clause (section 2 of the Indiana Occupational Safety and Health Act, which requires employers to ". . . establish and maintain conditions of work which are reasonably safe and healthful for employees, and free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees."). In his July 17 submission to the docket (Ex. 15–3), however, Mr. Morawetz indicates that, while the Union believed a general duty clause citation should have been issued in the case about which it complained, he is now satisfied that, ". . . general duty citations are presently being issued when they are appropriate."

One aspect of Mr. Morawetz's original concerns about the other IOSHA inspection discussed in his June 18 letter was his belief that as a result of an IOSHA investigation of a workplace fatality in a second foundry whose workers the Union represents, IOSHA should have cited the company for a violation of its respirator standard. However, in his July 17 submission, Mr. Morawetz indicates that his discussions with Commissioner McCreary clarified IOSHA's policies and actions in this case, and that, given the nature of the fatality and the fact that a general duty clause citation was issued by IOSHA, ". . . the citation as presently written is the appropriate course of action."

Another element of Mr. Morawetz's concerns with IOSHA's investigation of this fatality relates to one of the structural aspects of the State plan discussed in his June 18 letter, IOSHA's records retention policy. Mr. Morawetz originally expressed concern about the absence of documentation on prior fatality investigations at the foundry, but his July 17 submission indicates that he now understands that, since 1979, IOSHA has had a policy of maintaining all fatality investigation records indefinitely. Mr. Morawetz also acknowledges that the most recent, prior, fatality investigation at the foundry was conducted by Federal OSHA in 1979 (before signing of the Operational Status Agreement), the records of which were disposed of in accordance with Federal records retention policy; and, he indicates he has no objections to IOSHA's activities in this area.

The final point discussed by Mr. Morawetz in his June 18 submission was his concern about the effect of an amendment to the IOSHA Act which restricts IOSHA from enforcing provisions more stringently than

corresponding Federal provision. As discussed elsewhere in this notice, however, the basic State plan enforcement requirement, established by the Occupational Safety and Health Act of 1970, is that State standards and enforcement ". . . be *at least* as effective . . ." as OSHA's (emphasis added). States may but are not required to impose more stringent requirements than OSHA. Mr. Morawetz's July 17 submission indicates that the effect of the legislative amendment has been adequately clarified to him, and that, ". . . I do not believe we have any problem with its application."

Mr. Morawetz concludes his July 17 submission by indicating that, based on information obtained since his June 18 submission and hearing request, "I do not see a need to hold hearings on final approval of IOSHA's plan."

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Indiana State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of March 1984 through December 1985 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows.

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Indiana State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the May 19 notice, the Indiana plan provides for the adoption of standards and amendments thereto which are identical to, or at least as effective as, Federal standards. The State's law, previously approved by OSHA and made a part of the record in this proceeding (Ex. 3), includes provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

While past evaluations have shown that IOSHA generally adopts standards in a timely manner, during the evaluation period the State adopted five of eight required standards actions in a timely manner. There were minor delays ranging from two to four months in adopting OSHA's permanent standard for Ethylene Oxide and an amendment thereto, and an amendment to OSHA's Commercial Diving standard. As discussed in the May 19 notice, the delays were occasioned by the departure from IOSHA of the individual assigned responsibility for preparation of standard promulgation packages and a reorganization to reassign these responsibilities, as well as by the subsequent illness of the individual now assigned this responsibility. The temporary problem causing the standards delays was resolved by the end of the evaluation period and the State is now current in its adoption of required standards. (18(e) Evaluation Report, pp. 83–84.)

During the evaluation period, the Indiana Court of Appeals found one State standard (identical to Federal OSHA's 29 CFR 1926.501(a)) impermissibly vague during a review of a contested case. Federal OSHA's Solicitors reviewed the decision of the Indiana court which affected a standard relating to employee exit(s) from elevated ramps. Although in OSHA's opinion, the Court's adverse decision did not render the IOSHA standard or the State program less effective than OSHA's, the Indiana OSHA officials appealed the case to the State's Supreme Court. (18(e) Evaluation Report, p. 84.)

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. The State has generally adopted standards interpretations, which are at least as effective as the Federal, in a timely fashion. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Indiana program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Indiana State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). The 16 permanent variances granted during the evaluation period were granted in timely manner in accordance with approved State procedures and were deemed to provide equivalent protection. There were no temporary variances granted by Indiana during the evaluation period. (18(e) Evaluation Report, p. 88.)

Accordingly, OSHA finds that the Indiana program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the

legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Indiana Occupational Safety and Health Act, as amended, and implementing regulations previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The 18(e) Evaluation Report data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the May 19 **Federal Register** notice, IOSHA has a procedure similar to OSHA's for handling non-formal complaints by a letter to the employer. However, IOSHA responded to complaints by inspection to a greater extent than OSHA during the evaluation period (70.4% of safety complaints and 61.7% of health complaints received by the State were responded to by inspection). Complaint response was timely. (18)(e) Evaluation Report, pp. 33–35.)

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Indiana's inspection targeting system is similar to the Federal system. Data contained in the 18(e) evaluation indicate that 98.7% of State programmed safety inspections and 99.3% of State programmed health inspections were conducted in high hazard industries (18(e) Evaluation Report, p. 30). This performance is comparable to OSHA's.

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. During the evaluation period employees elected to exercise their right to accompany the inspector or were interviewed on the walkaround in 88.1% of initial inspections. The remaining 11.9% of initial inspections were records inspections, in accordance with Indiana's adoption of the Federal OSHA policy. In these cases, since no inspection was conducted, no employee representatives were available. OSHA concludes that Indiana's efforts in apprising employees of their rights, and providing them with the means to exercise their rights, have been successful. 18(e) Evaluation Report, pp. 39–42.)

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Indiana requires that a poster, which was previously approved by OSHA (41 FR 10063), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employees exposure to regulated agents and accesss to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard and the Hazard Communication Standard, both of which are identical to the corresponding Federal standards. Federal OSHA's evaluation concludes that the State performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Indiana Act and regulations provide for discrimination protection equivalent to that provided by Federal OSHA. During the evaluation period, the State investigated 37 discrimination complaints in a timely manner. Of the investigated complaints, 17% were found to have merit; all were settled administratively, which compares favorably to the Federal. (18(e) Evaluation Report, pp. 89–91.)

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations (20 CFR 1902.4(c)(2)(vii) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and *Field Operations Manual* which are similar to the Federal. The 18(e) Evaluation Report indicates that there was one imminent danger situation addressed during the period (18(e) Evaluation Report, pp. A–9). There were no instances of complaints about the protection of trade secrets (19(e) Evaluation Report, p. A–20).

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). Section 23.1 of the Indiana Occupational Safety and Health Act authorizes the Commissioner to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. Indiana law allows OSHA to apply for a warrant from the State courts to permit entry into an establishment that has refused entry for the purpose of inspection or investigation. The Indiana law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. The State successfully obtained warrants for all of the 155 denials of entry during the evaluation period. (19(e) Evaluation Report, p. 38.) the evlauation reports notes that there were no instances of advance notice of inspection (p. 39).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspections, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2)(x) and (xi)). The Indiana plan through its law, regulations and *Field Operations Manual,* which have all been previously approved by OSHA, has established a system similar to the Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement

periods, requiring posting of such citations for employee information, and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Procedures for the IOSHA compliance program are set out in the Indiana *Field Operations Manual*, which is patterned after the Federal manual, and thus the State follows inspection procedures, including documentation procedures, which are similar to the Federal. The Evaluation Report notes adherence to these procedures and does not indicate any problem in adequately documenting inspections to support citations. IOSHA cites an average of 3.5 violations on programmed safety inspections with citations and 2.5 violations on programmed health inspections with citations; and, 25.5% of safety and 26.5% of health violations are cited as serious, performance comparable to Federal OSHA during the evaluation period. (Evaluation Report, p. 43.) Indiana's lapse time from inspection to issuance of citation has averaged 14 days for safety and 30 days for health, both of which compare favorably with Federal performance during the period. (18(e) Evaluation Report, p. A–19.) Indiana's procedures for calculation of penalties also are comparable to Federal OSHA's. The 18(e) evaluation indicates that average proposed penalties for serious violations were $153 for safety and $395 for health. (18(e) Evaluation Report, pp. A–14, 15.)

Indiana conducts a proportionately greater number of follow-up inspections to assure abatement of cited violations (12.5% of not-in-compliance inspections) than does Federal OSHA. State abatement periods average 8.8 days for serious safety and 37.4 days for serious health violation. (18(e) Evaluation Report, p. 51.)

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements a full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Indiana's procedures for employer contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the law, regulations and *Field Operations Manual* made a part of the record in this proceeding and are similar to the Federal procedures, except that the system for review of contested cases is two-tiered in that contests result in automatic informal review by the Commissioner of Labor with futher contest and review by the Indiana Board of Safety Review. Appeals of Citations, penalties and abatement periods heard by the Indiana Board of Safety Review may be further appealed to the appropriate State District Court.

During the 18(e) evaluation period, 1.7% of safety inspections with citation, and 2.1% of health inspections with citation, resulted in contests. This level is lower than the percentage of formal contests Federally. The report concludes that the State's contest results are appropriate, with the rights of all parties respected (18(e) Evaluation Report, pp. 67–68).

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The State had no adverse decisions which would require review or corrective action. Accordingly, OSHA finds that the Indiana plan effectively reviews contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcment operations provided under the Indiana plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

Indiana's plan provides a program in the public sector separate from that in the private sector, but which is patterned after the private sector program with the exception that monetary penalties are not utilized. In addition to the full-time safety inspectors assigned to public sector activities, the program is supplemented with the services of industrial hygienists from the Bureau of Industrial Hygiene, who are assigned to handle health-related problems in State and local government agencies. For the 21-month report period, IOSHA conducted 5,136 public sector inspections, on 49% of which citations were issued. Seventy-three percent of public sector violations were classified as serious. (18(e) Evaluation Report, pp. 56–58.) Injury and illness rates for State and local government employment (1984: all case rate 5.9; lost workday case rate 2.6) are lower than those for the private sector. While the State government lost workday case rate rose slightly (from 2.5 to 2.6) in 1984, the private sector rate has a slightly higher increase (from 3.1 to 3.3). (18(e) Evaluation Report, pp. 25–26.)

Because the State treats the public sector in a similar manner to the private sector, as evidenced by its written procedures, and since monitoring indicates comparable performance in the public and private sectors, OSHA concludes that the Indiana program meets the criterion in 29 CFR 1902.3(j).

(5) *Staffing and Resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The Indiana plan provides for 47 safety compliance officers and 23 industrial hygienists as set forth in the Indiana FY 1986 grant. This staffing level meets the approved, revised, fully-effective benchmarks for Indiana for health and safety staffing, as discussed elsewhere in this notice.

The State provides a comprehensive training program for new compliance personnel and refresher and specialized training for experienced staff, which includes attendance at the OSHA Training Institute and in-house and field training exercises. (18(e) Evaluation Report, pp. 77–79.) During the evaluation period, State safety and health inspectors received, on the average, over 40 hours of formal training a year. (18(e) Evaluation Report, p. 81.)

As noted in the **Federal Register** notice announcing certification of the

completion of developmental steps for Indiana (46 FR 49119), all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Office of Personnel Management.

Because Indiana has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Courts Order in *AFL–CIO* v. *Marshall, supra,* are being met by the Indiana plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Indiana plan is funded at $3,895,004 in FY 1986. (Fifty percent of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the 18(e) Evaluation Report, Indiana's funding is judged sufficient in absolute terms; moreover, the State allocates its resources to the various aspects of the program in a manner similar to OSHA. (18(e) Evaluation Report, p. 11.) On this basis, OSHA finds that Indiana has provided sufficient funding for the various activities carried out under the plan.

(6) *Records and Reports.* State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Indiana's employer recordkeeping requirements are equivalent to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted elsewhere in this notice, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Indiana has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary Compliance Program.* A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

The 18(e) Evaluation Report (p. 80) notes that the State conducts a comprehensive training and education program covering the private and public sector. Training sessions for employers, employees and labor representatives have included seminars on general safety and health regulations, specific subjects such as forklift operations, machine guarding, flammable and combustible liquids, and hazard communication requirements. (18(e) Evaluation Report, p. 80.)

Indiana administers under its State plan a consultation program for both private and public sector employers and employees, designed to supplement the enforcement efforts of the safety and health compliance officers, with a field staff of 11 safety and three health consultants. During the last 12 months of the evaluation period, IOSHA received and responded to 587 requests for consultations. Consultants observed an average of six violations per visit.

As part of its consultation program, Indiana also offers exemptions from general schedule inspections to companies which meet certain prerequisites, similar to the exemption program implemented by Federal OSHA for companies receiving consultations under section 7(c)(1) of the Act. In the twelve month period between October 1984 and September 1985, IOSHA received 468 requests for exemption from general schedule safety inspections. IOSHA granted 346 of these requests, denied 32, and the balance were pending at the time of Federal review.

As discussed in the May 19 **Federal Register** notice, OSHA conducted a special study of the State's inspection exemption program which disclosed that there were some deficiencies in documentation in a sample of the files on exempted companies, and that employee interviews and injury and illness rates were used inconsistently. The problems identified in case file reviews were further investigated in on-site visits to ten exempted companies with high lost workday incidence rates. In the Federal monitors' judgment, three of the ten companies visited did not have all of the required exemption prerequisites implemented.

The OSHA Regional Administrator reviewed the special study findings with the Indiana Commissioner of Labor, and in response to OSHA recommendations, IOSHA instituted a series of actions to correct the deficiencies and to prevent their recurrence, including establishment of clear guidelines, intensive training, hiring a new field supervisor, and closer supervisory review of case files, as discussed in the 18(e) Evaluation Report. In addition, IOSHA terminated the exemption status of the three questionable companies and obtained the information to complete the files on the 32 cases with inadequate documentation. Additionally, IOSHA conducted an internal audit of companies granted exemptions in 1985 and 1986, and as a result completed documentation in deficient files and identified three additional companies with high injury rates whose exemptions have been terminated.

Based on the remedial action undertaken by IOSHA to correct deficiencies in the inspection exemption through the consultation program, OSHA believes that IOSHA meets all criteria for an acceptable voluntary compliance program. (18(e) Evaluation Report, pp. 73–77.)

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)).

The 1983 and 1984 Bureau of Labor Statistics injury and illness rates for Indiana (private sector all case rate for 1983, 7.3; 1984, 7.7; lost workday case rate for 1983, 3.1; 1984; 3.3) were the same as or lower than rates in States where Federal OSHA provides enforcement coverage. In 1984, the all case incidence rates and the lost workday case rates for the private sector, manufacturing and construction experienced a modest increase in Indiana; however, the rate of increase was within the acceptable range established under OSHA's State Plan Activities Measures and the absolute rates in each case for 1984 were the same as or lower than corresponding rates in Federal States. However, while the percent change in lost workday cases for three of the State's five most hazardous industries was within the acceptable range as compared to the change in rates under Federal jurisdiction, the rate change in the two lowest ranked industries in the five exceeded the acceptable range. The relatively greater increase from 1983 to 1984 in lost workday case rates in these two industries (fabricated metal products, Standard Industrial Classification (SIC) 34; and furniture and fixtures manufacturing, SIC 25) in Indiana is attributed to a greater increase in employment levels in these SIC's in Indiana when compared to States under Federal OSHA jurisdiction

for the same period, as discussed in the May 19 notice.

Therefore, OSHA finds that the trends in injury and illness statistics in Indiana compared favorably with those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that the Indiana State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the Indiana State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective September 26, 1986.

Under this 18(e) determination, Indiana will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Indiana must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 39 CFR Part 1902 are being applied in actual operations under the Indiana plan terminates OSHA authority for Federal enforcement of its standards in Indiana, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2)(and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination would remain under Federal jursidiction. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Indiana plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in private-sector maritime employment and private-sector hazardous-waste disposal facilities designated as Superfund sites. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47 *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 28 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes changes to Subpart Z of Part 1952 to reflect the final approval of the Indiana plan.

The table of contents for Part 1952, Subpart Z, has been revised to reflect the following changes.

Section 1952.324, Final approval determination, which formerly was reserved, has been completed to reflect the determination granting final approval of the plan. The section contains a more accurate description of the current scope of the plan than the one contained in the initial approval decision.

Section 1952.325, Level of Federal enforcement, has been changed to reflect the State's 18(e) status, from the former description of the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on October 22, 1981. Federal concurrent enforcement

authority has been relinquished as part of the present 18(e) determination for Indiana, and the Operational Status Agreement is no longer in effect. Section 1952.325 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Indiana under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. Certification to this effect was previously forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC this 26th day of September 1986.

John A. Pendergrass,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart Z of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read as follows:

Authority: Secs. 8, 18, Occupational Safety and Health Act of 1970, (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. The table of contents for Part 1952, Subpart Z, is revised to read as follows:

Subpart Z—Indiana

3. Sections 1952.324 and 1952.325 are revised to read as follows:

§ 1952.324 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1986 in response to a Court Order in *AFL–CIO* v. *Marshall* (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Indiana State plan for a period of at least one year following certification of completion of developmental steps (46 FR 49119). Based on the 18(e) Evaluation Report for the period of March 1984 through December 1985, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Indiana's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Indiana plan was granted final approval, and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective September 26, 1986.

(b) The plan which has received final approval covers all activities of employers and places of employment in Indiana except for maritime employment in the private sector and private-sector hazardous-waste disposal facilities designated as Superfund sites.

(c) Indiana is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

§ 1952.325 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Indiana plan under section 18(e) of the Act, effective September 26, 1986, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Indiana plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5 (a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Indiana plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private-sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is also retained at private-sector hazardous-waste disposal facilities designated as Superfund sites, and with respect to Federal government employers and employees.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the plan which has received final approval and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised

immediately upon agreement between Federal OSHA and the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Indiana State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-7-FRL-3086-7]

Standards for Performance for New Stationary Sources (NSPS); Delegation of Authority to the State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces the delegation of authority by the Environmental Protection Agency (i.e., EPA or the agency) to the State of Kansas for the implementation and enforcement of the standards for 38 NSPS 40 CFR Part 60 source categories. This action is in response to the State's request for delegation of authority. The effect of the delegation is to shift the primary responsibility for enforcement of the standards from EPA to the State of Kansas. Under the terms of the delegation, Kansas will automatically receive authority to implement and enforce additional NSPS, upon the State's future adoption of said additional standards and its compliance with the applicable provisions of the delegation agreement.

EFFECTIVE DATE: September 26, 1986.

ADDRESSES: All requests, reports, applications, submittals, and such other communications which are required to be submitted under 40 CFR Part 60 (including the notifications required to be submitted under Subpart A of 40 CFR Part 60) for affected facilities in Kansas should be sent to the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620. A copy of all Subpart A related notifications must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Charles W. Whitmore, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address ((913) 236-2896 or FTS: 757-2896).

SUPPLEMENTARY INFORMATION: Section 111(c) of the Clean Air Act allows the Administrator of the Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60. When a delegation is issued, the agency retains concurrent authority to implement and enforce the delegated standards. The delegation basically shifts the primary responsibility for implementation and enforcement of the standards from the agency to the state government.

The state of Kansas has requested authority for delegation of the standards for 38 NSPS source categories. On May 2, 1986, the agency and the State of Kansas entered into an agreement which delegated authority to implement and enforce the requirements of certain NSPS categories. The State of Kansas reserved three areas in the numbering of their regulations for future NSPS source category delegations. EPA delegated only the NSPS source categories which had a corresponding Kansas regulation. The agreement also set forth procedures under which concurrent authority to implement and enforce additional standards will be automatically delegated to the State upon the adoption of the additional standards by the State if the conditions of the agreement are met.

In the following table is a list of the NSPS source categories which have *not* been delegated:

NSPS Subpart	Source Category Description 40 CFR Part 60
P	Primary copper smelters.
Q	Primary zinc smelters.
R	Primary lead smelters.
S	Primary aluminum reduction plants.
T	Phosphate fertilizer industry: Wet-process phosphoric acid plants.
U	Phosphate fertilizer industry: superphosphoric acid plants.
V	Phosphate fertilizer industry: Diammonium phosphate plants.
W	Phosphate fertilizer industry: Triple superphosphate plants.
X	Phosphate fertilizer industry: Granular triple superphosphate storage facilities.
BB	Kraft pulp mills.
NN	Phosphate rock plants.
JJJ	Petroleum dry cleaners.
KKK	Equipment leaks of VOC from onshore natural gas processing plants.
PPP	Wool fiberglas insulation manufacturing plants.

Interested individuals are informed that, as of May 2, 1986, the State of Kansas has EPA's authorization to implement and enforce the requirements with respect to the 38 NSPS adopted source categories. These categories are listed in an attachment in the delegation of authority letter dated May 2, 1986, which is reproduced in its entirety as follows:

May 2, 1986

Barbara J. Sabol, Secretary,
Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620

Dear Ms. Sabol: This letter is in response to your request dated March 18, 1986, for delegation of authority for implementation and enforcement of the New Source Performance Standards (NSPS), for 38 of the 48 source categories promulgated by the Environmental Protection Agency (EPA) prior to July 1, 1985.

The EPA has determined that the following Kansas Air Pollution Emission Control Regulations, for the Kansas Department of Health and Environment (KDHE), provide for adequate and effective procedures for implementation and enforcement of NSPS by KDHE: K.A.R. 28-19-83 through 28-19-96, 28-19-98 through 28-19-109, 28-19-119 through 28-19-121a, 28-19-123 through 28-19-125, 28-19-127 through 28-19-131, 28-19-133 through 28-19-141, 28-19-149 through 28-19-151, 28-19-153, 28-19-154, and 28-19-159. The corresponding NSPS subparts for the Kansas regulations are listed in Attachment A of this letter. For the purpose of determining compliance with K.A.R. 28-19-104, the test methods and procedures will be used at 40 CFR 60.106.

The EPA hereby delegates, to the State of Kansas, the referenced NSPS regulations. This initial delegation of authority is subject to the conditions in the attached delegation agreement. Future extensions of authority will occur as specified in the agreement (i.e., delegations will automatically occur upon the State's adoption of additional standards without action by EPA) if the conditions of the agreement are met.

Please return the signed original of the delegation agreement. Future correspondence pertaining to the delegation agreement (e.g., the pre-and post-adoption notifications) to Mr. William A. Spratlin, Director, Air and Toxics Division, U.S. EPA Region VII, 726 Minnesota Ave., Kansas City, Kansas 66101.

The delegation procedures and today's delegation of authority will be announced in the Federal Register in the near future.

The delegation of authority is immediately effective unless otherwise requested by the State of Kansas.

If you have any questions regarding the delegation, please contact Mr. William A. Spratlin, of my staff at (913) 236-2896.

Sincerely yours,

Morris Kay,

Regional Administrator.

Enclosures
Delegated NSPS subparts
Delegation Agreement

ATTACHMENT A.—KANSAS DELEGATED STANDARDS

NSPS subpart	Source category description 40 CFR Part 60	Cross reference K.A.R.
A	General provisions and testing methods.	28-19-83-28-19-98
D	Fossil-fuel fired steam generators (for which construction is commenced after Aug. 17, 1971).	28-19-98
Da	Electric utility steam generating units (for which construction is commenced after Sept. 18, 1978).	28-19-98a
E	Incinerators	28-19-99
F	Portland cement plants	28-19-100
G	Nitric acid plants	28-19-101
H	Sulfuric acid plants	28-19-102
I	Hot mix asphalt plants	28-19-103
J	Petroleum refineries	28-19-104
K	Storage vessels for petroleum liquids constructed after June 11, 1973, and prior to May 19, 1978.	28-19-105
Ka	Storage vessels for petroleum liquids constructed after May 18, 1978.	28-19-105a
L	Secondary lead smelters	28-19-106
M	Secondary brass and bronze production plants.	28-19-107
N	Iron and steel plants	28-19-108
O	Sewage treatment plants	28-19-109
P-X	(see CFR)	(1)
Y	Coal preparation plants	28-19-119
Z	Ferroalloy production facilities	28-19-120
AA	Steel plants: Electric ARC furnaces	28-19-121
BB	Kraft pulp mills	(1)
CC	Glass manufacturing plants	28-19-123
DD	Grain elevators	28-19-124
EE	Metal furniture surface coating	28-19-125
GG	Stationary gas turbines	28-19-127
HH	Lime manufacturing plants	28-19-128
KK	Lead acid battery manufacturing plants.	28-19-129
LL	Metallic mineral processing plants	28-19-130
MM	Automobile and light-duty truck surface coating operations.	28-19-131
NN	Phosphate rock plants	(1)
PP	Ammonium sulfate manufacture	28-19-133
QQ	Publication rotogravure printing	28-19-134
RR	Pressure sensitive tape and label surface coating operations.	28-19-135
SS	Large applicance surface coating	28-19-136
TT	Metal coil surface coating	28-19-137
UU	Asphalt processing and asphalt roofing manufacturing.	28-19-138
VV	Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry.	28-19-139
WW	Beverage can surface coating industry.	28-19-140
XX	Bulk gasoline terminals	28-19-141
FFF	Flexible vinyl and urethane coating and printing.	28-19-149
GGG	Equipment leaks of VOC in petroleum refineries.	28-19-150
HHH	Synthetic fiber production facilities	28-19-151

[1] Reserved.

Hereafter, the regional office will periodically publish in a **Federal Register** notice which announces the automatic delegations of authority which have occurred under the terms of the May 2, 1986, delegation of authority document.

Effective immediately, all reports, correspondence, and such other communications, that are required to be submitted under the NSPS regulations for facilities in Kansas affected by the delegation of authority, should be sent to the KDHE at the above adress rather than to the EPA Region VII office, except as noted below.

A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60, must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA regional office.

This notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 7411).

Morris Kay,

Regional Administrator.

[FR Doc. 86-21824 Filed 9-25-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-660-86-4121-02]

43 CFR Part 3470

Coal Management Provisions and Limitations; Technical Amendment Extending the Lease Qualification Date

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking makes a technical amendment to one provision of the existing regulations on coal management provisions and limitations. The amendment will conform the existing regulations to the provisions of section 320 of the Act of December 19, 1985 (99 Stat. 1266).

EFFECTIVE DATE: September 26, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Paul W. Politzer, (202) 343-7722

or

Allen B. Agnew, (202) 343-7722.

SUPPLEMENTARY INFORMATION: This final rulemaking makes a technical amendment to the existing regulations relating to coal management provisions and limitations. Specifically, the amendment will change the effective date in § 3472.1-2(e) of the existing regulations to bring it into conformance with the date mandated by the Congress in section 320 of the Act of December 19, 1985 (99 Stat. 1266).

The provisions of section 2(a)(2)(A) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(2)(a)(2)(A)), as amended by section 3 of the Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1083), provided:

> The Secretary shall not issue a lease or leases under the terms of this chapter to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 207(b) of this title, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.

The existing regulations implemented section 2(a)(2)(A) of the Mineral Leasing Act by providing in § 3472.1-2(e) that after August 4, 1986, no lease shall be issued to any applicant or bidder and no existing lease shall be transferred to any party that holds and has held for 10 years any lease which is not producing coal in commercial quantities.

However, section 320 of the Act of December 19, 1985, making further continuing appropriations for fiscal year 1986 and for other purposes changed the law by providing that the provisions of section 2(a)(2)(A) of the Mineral Leasing Act, as amended by section 3 of the

Federal Coal Leasing Amendments Act of 1976, shall not take effect until December 31, 1986.

Since the Congress mandated that the provisions of section 2(a)(2)(A) shall not take effect until December 31, 1986, and gave the Secretary of the Interior no discretion regarding that date, public comment on the new date is impracticable and unnecessary. Therefore, this amendment is being published as a final rulemaking without an opportunity for comment. In addition, the change made by the amendment will remove any confusion that might exist because of a difference between the date set in the existing regulations and that set by statute, which is controlling.

Finally, this final rulemaking is being made effective upon the date of publication because the date set by the Act of December 19, 1985, is already effective and no useful purpose would be served by providing an effective date later than the date of publication. In addition, the rulemaking implements a congressional change which relieves a restriction.

The principal author of this final rulemaking is Allen B. Agnew, Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The change made by this final rulemaking has been mandated by the Congress and has the same impact on all holders of coal leases, whether large or small.

There are no additional information collection requirements imposed by this final rulemaking requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3470

Coal, Government contracts, Royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359) and the Act of December 19, 1985 (99 Stat. 1266), Subpart 3472, Part 3470, Group 3400, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

September 23, 1986.

PART 3470—[AMENDED]

1. The authority citation for Part 3470 is revised to read:

Authority: 30 U.S.C. 181 et seq., 30 U.S.C. 351–359 and 99 Stat. 1266.

§ 3472.1–2 [Amended]

2. Section 3472.1–2(e) is amended by removing from where it appears in the first sentence thereof the date "August 4, 1986" and replacing it with the date "December 31, 1986".

[FR Doc. 86–21792 Filed 9–25–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–213]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule delegates to the Assistant Secretary for Policy and International Affairs certain responsibilities of the Secretary concerning economic regulation of the airline industry, and administration of the Essential Air Service Program. In addition, it makes minor corrections to reflect current office names and duties.

DATE: This rule is effective September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of General Counsel (C–50), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20690; (202) 366–9306.

SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT) inherited many of the functions of the Civil Aeronautics Board on January 1, 1985, including the Essential Air Service Program. Under the delegation of authority related to that transfer (50 FR 7782, February 26, 1986), the Office of Essential Air Service was placed within the Office of the Secretary and reported directly to the Secretary of Transportation for most matters. The Assistant Secretary for Policy and International Affairs was, however, delegated authority to adopt, reject or modify recommendations from, and decisions of, the Director of Essential Air Service. This rule expands the delegation to the Assistant Secretary for Policy and International Affairs concerning the Essential Air Service Program.

This rule corrects the section dealing with the spheres of responsibility to state that the Secretary is directly responsible for commercial space transportation. It also clarifies the responsibility of the Assistant Secretary for Policy and International Affairs for economic regulation of the airline industry. Finally, the rule reflects a reorganization within the Department in which several offices were abolished, reorganized or renamed.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in less than thirty days after publication in the **Federal Register.**

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies).

Organization and functions (government agencies);

PART 1—[AMENDED]

As Secretary of the Department of Transportation, I amend 49 CFR Part 1, *Organization and Delegation of Powers and Duties,* to read a follows:

1. The authority of Part 1 continues to read as follows:

Authority: 49 U.S.C. 322, 1652 and 1657(e).

2. Section 1.22, *Structure,* is amended by revising paragraphs (a), (b), (e) and (f) and the introductory text of the section is republished to read as follows:

§ 1.22 Structure.

The structure of the Office of the Secretary, through the level of functional offices, is as follows:

(a) Secretary and Deputy Secretary. The Secretary and Deputy Secretary are assisted by the Science and Technology Advisor, Executive Secretariat, the Contract Appeals Board, the Departmental Office of Civil Rights, the Office of Small and Disadvantaged Business Utilization and the Office of Commercial Space Transportation, all of which report to the Secretary. The Assistant Secretaries, the General Counsel, the Inspector General, and the Regional Representatives of the

Secretary also report directly to the Secretary.

(b) Office of the Assistant Secretary for Policy and International Affairs. This Office is composed of the Offices of Transportation Regulatory Affairs; International Transportation and Trade; Economics; Aviation Operations; International Aviation Relations; and Essential Air Service.

* * * * *

(e) Office of the Assistant Secretary for Governmental Affairs. This Office is composed of the Offices of Congressional Affairs; Intergovernmental and Consumer Affairs; and Technology and Planning Assistance.

(f) Office of the Assistant Secretary for Administration. This Office is composed of the Offices of Personnel; Management Planning; Information Resource Management; Administrative Services and Property Management; Hearings; Acquisition and Grant Management; Security; and Financial Management.

* * * * *

3. Paragraphs (a) and (b) of § 1.23, *Spheres of primary responsibility* are revised to read as follows:

§ 1.23 Spheres of primary responsibility.

(a) Secretary and Deputy Secretary. Overall planning, direction, and control of Departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in Departmental programs, transportation research and technology, and commercial space transportation.

(b) Assistant Secretary for Policy and International Affairs. Public policy assessment and review; private sector evaluation; regulatory and legislative review; international policy and issues; economic regulation of the airline industry; and essential air service program.

* * * * *

4. Paragraph (i)(1) of § 1.56, *Delegations to Assistant Secretary for Policy and International Affairs,* is revised to read as follows:

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

* * * * *

(i) * * *

(1) 49 U.S.C. 1551(b); and

* * * * *

§ 1.69 [Removed]

5. Section 1.69, *Delegations to Director, Office of Essential Air Service,* is removed.

6. The Table of Contents of Part 1, *Organization of Delegation of Powers and Duties,* is revised by removing "§ 1.69 Delegations to Director, Office of Essential Air Service."

Issued in Washington, DC, on September 9, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-21762 Filed 9-25-86; 8:45 am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1003

Listing of Commission Forms

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Through this notice the Commission is updating its listing of forms currently used by the Commission which appears at 49 CFR Part 1003. The references to two obsolete forms are removed, and the reference to the new form that replaced those forms is added to the list.

EFFECTIVE DATE: September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275-7428.

SUPPLEMENTARY INFORMATION: Inasmuch as this final rule only updates the listing of forms that have been approved by the Commission in other decisions, notice and comment on these changes will be unnecessary.

This rule will not have a significant effect on a substantial number of small entities, nor will it affect the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1003

Brokers, Freight forwarders, Maritime carriers, Motor carriers, Securities.

By the Commission,

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations, Part 1003, is amended as follows:

PART 1003—LIST OF FORMS

1. The authority citation for Part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

2. The list of forms in § 1003.2 is amended by removing the entries for Forms OP-TA-19 and OP-TA-19(a), and by adding to the list, in the place left by their removal, the following form: OCCA-19.

§ 1003.2 Motor and Water Carriers, Broker, and Freight Forwarder Forms

* * * * *

Application for extension of emergency temporary authority. Cross Reference: 49 CFR Part 1162.

* * * * *

[FR. Doc. 86-21794 Filed 9-25-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 60617-6180]

Drum Fishery of the Gulf of Mexico; Extension of Effective Date of Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule for the management and conservation of the drum fishery of the Gulf of Mexico is in effect through September 23, 1986. The Secretary of Commerce (Secretary) extends this rule for an additional 90 days (through December 22, 1986) and modifies the rule to prohibit the retention of red drum taken from the fishery conservation zone (FCZ) by all persons fishing therein. The intended effect of extending and modifying this rule is to conserve the resource while the Secretary prepares and implements a fishery management plan for the red drum fishery.

EFFECTIVE DATE: From 0001 hours, local time, September 24, 1986, through 2400 hours, local time, December 22, 1986.

ADDRESS: Copies of documents supporting this action may be obtained from and comments on this rule may be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: Under section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency rule (51 FR 23551, June 30, 1986) for 90 days, through September 23, 1986, to address an emergency in the red drum fishery. The Secretary extends this emergency rule for an additional 90 days in accordance with section 305(e)(3)(B) of the

Magnuson Act because the conditions justifying the emergency action continue.

The initial emergency rule set a total directed net harvest (TDNH) of 1.0 million pounds. The rule also specified reporting requirements for vessels in the directed red drum net fishery and for spotter pilots. In addition, vessels with an incidental take of red drum were required to report their harvest. The directed red drum net fishery harvested the TDNH of 1.0 million pounds and the fishery was closed at noon local time, July 20, 1986 (51 FR 26554, July 24, 1986; corrected at 51 FR 27413, July 31, 1986).

The Gulf of Mexico Fishery Management Council (Council) as its meeting during the week of September 8, 1986, concurred in the Secretary's finding that an emergency continues to exist with regard to the red drum fishery of the Gulf of Mexico. The Council concurred likewise in the Secretary's decision to extend the emergency rule for an additional 90 days and recommended that the extended rule be modified to prohibit the retention of red drum harvested from the FCZ by all persons. The Secretary has reviewed this recommendation and concluded that such action would be consistent with the provisions of the Magnuson Act and other applicable Federal law and is therefore implementing the Council's recommendation by this extension and modification of the emergency interim rule. The action will assure protection of the red drum resource in the FCZ while additional data are acquired for development of the Secretarial FMP.

A detailed discussion of the background, issues, regulations, and classification of the rulemaking is set forth in the initial emergency interim rule and is not repeated here.

This extension of an emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of that Order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 23, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 653 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 653.2 is amended by removing the definitions for *Commercial fisherman, Dealer, Directed red drum net fishery, Fish, Fishing, Fishing vessel, NMFS approved observer, Net, Non-directed fishery, Processor, Regional Director, Spotter aircraft pilot, Total directed net harvest (TDNH),* and *Trip,* and revising the definition of *Vessel of the United States* to read as follows:

§ 653.2 Definitions.

* * * * *

(a) * * *

Vessel of the United States means—

(a) Any vessel documented under Chapter 121 of Title 46, United States Code;

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure, and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 653.3 [Amended]

3. Section 653.3 is amended by removing paragraph (d) in its entirety.

4. Section 653.4 is amended by removing the text and by reserving the section number and title to read as follows:

§ 653.4 Permits and fees. [Reserved]

5. Section 653.5 is amended by removing the text and reserving the section number and title to read as follows:

§ 653.5 Reporting requirements. [Reserved]

6. Section 653.7 is amended by removing paragraphs (a) (1), (2), (3), and (6); by redesignating paragraphs (a) (4) and (5) as (a) (3) and (4) respectively; by redesignating existing paragraphs (a) (7) through (14) as (a) (5) through (12); and by adding new paragraphs (a) (1) and (2) to read as follows:

§ 653.7 Prohibitions.

* * * * *

(1) To retain or land red drum taken from the FCZ;

(2) Purchase, sell, barter, trade, or accept in trade, red drum harvested in the FCZ. (This prohibition does not apply to red drum lawfully harvested, landed, bartered, traded, or sold prior to September 24, 1986);

* * * * *

7. Section 653.21 is amended by removing the text and reserving the section number and title to read as follows:

§ 653.21 Quotas. [Reserved]

8. Section 653.22 is revised to read as follows:

§ 653.22 Closures.

The red drum fishery in the FCZ is closed. The retention or landing of red drum taken from the FCZ is prohibited.

[FR Doc. 86-21861 Filed 9-23-86; 5:04 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 187
Friday, September 26, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 9001 Through 9007, 9012 and 9013 Through 9039

[Notice 1986-8]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Extension of comment period.

SUMMARY: On August 5, 1986, the Federal Election Commission published a Notice of Proposed Rulemaking on regulations governing the public financing of Presidential primary and general election candidates (51 FR 28154). In that Notice, the Commission set a 45 day comment period, with comments due on September 19, 1986.

The Commission has, however, received a request to extend the comment period on this rulemaking. The Commission has therefore decided to accept comments through October 20, 1986.

DATE: Comments must be received on or before October 20, 1986.

ADDRESS: Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, (202) 376-5690 or (800) 424-9530.

Dated: September 23, 1986.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 86-21828 Filed 9-25-86; 8:45 am]

BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Rel. No. IC-15314; File No. S7-22-86]

Exemption From the Investment Company Act of 1940 for the Offer or Sale of Debt Securities and Non-Voting Preferred Stock by Foreign Banks or Foreign Bank Finance Subsidiaries

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form.

SUMMARY: The Securities and Exchange Commission is proposing a rule which would, under certain circumstances, permit a foreign bank or the bank's finance subsidiary to offer or sell its own debt securities or non-voting preferred stock in the United States without registering as an investment company under the Investment Company Act of 1940. In connection with the rule, the Commission is proposing a related form. The Commission is also requesting comment on the conditions under which a foreign bank should be permitted to offer or sell its own equity securities in the United States without registering as an investment company.

DATE: Comments must be received on or before December 26, 1986.

ADDRESS: Comment letters should refer to file No. S7-22-86 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comment letters available for public inspection and copying in its Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272-2048, or Elizabeth K. Norsworthy, Chief, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is asking for public comment on proposed rule 6c-9 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*] ("Act"). Notwithstanding section 7 of the Act (15 U.S.C. 80a-7), the proposed rule would permit a foreign bank or the bank's finance subsidiary to offer or sell its own debt securities or non-voting preferred stock in the United States without registering as an investment company.[1] In connection with rule 6c-9, the Conmission is also proposing a new form N-6C9 that foreign banks and certain foreign bank finance subsidiaries would be required to file with the Commission, appointing an agent for service of process.

After discussing the status of foreign banks and their finance subsidiaries under the Act, this release describes and requests comment on the provisions of proposed rule 6C-9 and form N-6c9. The release also invites specific comment on the conditions under which a foreign bank should be permitted to offer or sell its own equity securities in the United States without registering as an investment company. The release concludes by inviting comment on the costs and benefits of adopting the proposed rule and form.

Background

A. Status of foreign banks under the Act

A bank may be considered an investment company to the extent that it is involved in owning, holding, trading, investing or reinvesting in securities.[2]

[1] As discussed in greater detail below, section 7 requires, *inter alia*, that an investment company register with the Commission before using the mails or any means or instrumentality of interstate commerce to offer for sale, sell or deliver after sale any security or any interest in any security. Under section 7(d) (15 U.S.C. 80a-7(d)), an investment company organized or created under the laws of a country other than the United States may not use the mails or any means or instrumentality of interstate commerce to offer for sale, sell or deliver after sale, in connection with a public offering, any security of which the company is the issuer unless the Commission has issued an order permitting the company to register as an investment company and to make a public offering. *See infra* notes 7 and 16 and accompanying text.

[2] Investment company is defined in section 3(a)(1) of the Act [15 U.S.C. 80a-3(a)(1)] as any issuer which is, holds itself out as being, or proposes to engaged primarily in the business of investing, reinvesting, or trading in securities.

Investment company is defined in section 3(a)(3) of the Act [15 U.S.C. 80a-3(a)(3)] as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items on an unconsolidated basis).

"Investment securities" are defined in section 3(a)(3) to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies.

Although U.S. banks are expressly expected from the definition of investment company by section 3(c)(3) of the Act [15 U.S.C. 80a-3(c)(3)], [3] foreign banks may not rely on that exception.[4] The Commission has also found that an exception or exemption from the definition of investment company is not available to foreign banks under section 3(b)(1) [15 U.S.C. 80a-3(b)(1)] or 3(b)(2) [15 U.S.C. 80a-3(b)(2)] [5] because those sections of the Act are intended to apply only to industrial companies.[6] Therefore, before a foreign bank uses the mails or any instrumentality of interstate commerce to offer or sell its securities in connection with a public offering, it must either register as an investment company [7] or apply to the Commission for an order under section 6(c) [15 U.S.C. 80a-6(c)] for an exemption from the Act.[8]

Since 1979, the Commission has granted exemptions to a number of foreign banks under section 6(c).[9] These orders have permitted the applicants to sell their own debt securities in the United States based on representations that typically fall into five categories:

1. *Status*—the foreign bank typically represents that it is bank and that it is regulated as a bank in its home country. It also frequently represents that the regulation is similar to that to which U.S. banks are subject. The bank may also represent that it is partially or wholly owned by a foreign sovereign.

2. *Securities Act registration*—The foreign bank makes representations about whether it can rely on an exemption from the registration requirements of the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") while typically reserving the right to issue securities registered under that Act in the future. Representations in this area typically relate to the type, minimunm denomination and total value of the securities to be sold, the manner in which the securities will be sold, the type of investor to whom the securities will be sold, and the use of the offering proceeds.

3. *Quality of the securities*—The foreign bank usually represents that the securities will receive one of the three highest ratings from a major rating service U.S. counsel will certify that the rating has been obtained, and the obligations on the securities will rank equally among themselves and, with certain exceptions, with all of the bank's other unsecured, unsubordinated indebtedness and superior to the rights of shareholders.

4. *Disclosure*—The foreign bank represents that it will deliver to purchasers of the securities an offering memorandum at least as comprehensive as that customarily used by U.S. issuers of similar securities, containing the bank's most recently audited financial statements and explaining the differences between the accounting principles used to prepare the financial statements and U.S. Generally Accepted Accounting Principles.

5. *Jurisdiction*—The foreign bank represents that it will appoint an agent located in the United States for service of process and will consent to the jurisdiction of the State and Federal courts in the City and State of New York for any actions based on the offer or sale of the debt securities. The appointment and consent are typically irrevocable until all amounts due and to become due on the securities have been paid.

Three foreign banks have also recently requested and received exemptions from the Act to offer or sell their own equity securities in the United States.[10] These banks made a number of representations, many of which are similar to those made by foreign banks intending to offer or sell debt securities in the United States. Those representations fall into four categories:

1. *Status*—The foreign bank represents that it is organized and regulated as a commercial bank in its

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[3] Section 3(c)(3) excepts, *inter alia*, banks from the definition of investment company. "Bank" is defined in section 2(a)(5) of the Act [15 U.S.C. 80a-2(a)(5)] to inlcude (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, or (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks and which is not operated for the purpose of evading the provisions of the Act.

[4] *See Bank of America National Savings Association* (June 23, 1983) letter from the Division of Investment Management to Bank of America National Savings Association (pub. avail. July 25, 1983). *See also Continental Illinois Delaware Ltd.* letter from the Division of Investment Management to Continental Illinois Delaware (pub. avail. April 1, 1973). *But see Bank Leumi le-Israel B.M.* (July 28, 1976) letter from the Division of Investment Management to Bank Leumi le-Israel B.M. (pub. avail. August 27, 1976) (the Division said it would not recommend that the Commission take enforcement action against the bank if it sold Export Financing Bonds guaranteed by the Export-Import Bank of the United States based on the bank counsel's opinion that the bank, with a subsidiary in New York, a branch in Illinois and agencies in New York and California, was a "bank" within the meaning of the Act). *See also* rule 17f-5 revised proposed release, Investment Management Company Release No. 13724 (January 2, 1985) [49 FR 2904] at note 9 and accompanying text.

[5] Section 3(b)(1) provides that an issuer is not an investment company if it is primarily engaged, directly or through wholly-owned subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities. Section 3(b)(2) provides that the Commission may, upon application by an issuer, issue an order declaring that issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities directly or through majority-owned subsidiaries or controlled companies conducting similar types of businesses.

[6] *See In re Paribas Corp.*, 40 SEC 487, 490 n. 5 (1961); *See also* Hearings on S. 3580 Before a Subcommittee of the Committee on Banking and Currency, 76th Cong., 3d Sess. 176-179 (1940); Hearings on H.R. 10065 Before a Subcommittee on the Committee on Interstate and Foreign Commerce, 76th Cong., 3d Sess. 102 (1940). *But see International Bank*, Investment Company Act Release No. 3986 (June 4, 1964) (finding under section 3(b)(2) that a holding company with sizeable interests in 23 U.S. banks, 3 foreign banks and various other financial institutions was involved in a business other than investing, reinvesting, owning, holding, or trading in securities). *See also* Gruson and Jackson, *Issuance of Securities by Foreign Banks and the Investment Company Act of 1940*, 1980 U. Ill. F. 185 (1980).

[7] *See supra* note 1. Under section 7(d), the Commission may, upon application by an investment company organized or otherwise created under the laws of a foreign country, issue a conditional or unconditional order permitting the company to register as an investment company and to make a public offering of its securities if the Commission finds that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the Act against such company and that the issuance of an order is otherwise consistent with the public interest and the protection of investors. *See Touche, Remnant & Co.* (July 27, 1984) letter from Division of Investment Managment to Touche, Remnant & Co. (pub. avail. August 27, 1984) (with respect to the meaning of "public offering" within the context of section 7(d)).

[8] Section 6(c) provides that the Commission may, by rules and regulations upon its own motion, or by order upon application, conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions form any provision or provisions of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

[9] *See, e.g.*, notices of application and orders for Australian Resources Development Bank, Ltd., Investment Company Act Release Nos. 10629 (March 15, 1979) [44 FR 17843] and 10659 (April 11, 1979); Kansallis-Osake-Pankki, Investment Company Act Release Nos. 10765 (July 9, 1979) [44 FR 41371] and 10821 (August 7, 1979); Post-Och Kreditbanken, Investment Company Act Release Nos. 10766 (July 9, 1979) [44 FR 41372] and 10820 (August 7, 1979); Societe Generale (Canada), Investment Company Act Release Nos. 14876 (December 26, 1985) [51 FR 267] and 14905 (January 21, 1986); and Instituto Bancari San Paolo di Torino, Investment Company Act Release Nos. 14885 (January 3, 1986) [41 FR 1347] and 14930 (January 31, 1986).

[10] *See* notices of applications and orders for Westpac Banking Corporation, Investment Company Act Release Nos. 15181 (June 27, 1986) [51 FR 24774] and 15217 (July 23, 1986); Barclays PLC, Investment Company Act Release Nos. 15189 (July 2, 1986) [51 FR 24955] and 15228 (July 29, 1986); and National Westminster Bank PLC, Investment Company Act Nos. 15211 (July 18, 1986) [51 FR 26619] and 15248 (August 12, 1986).

home country. The bank also represents that it intends to continue to function and to be regulated as a commercial bank in its home country.

2. *U.S. presence*—The bank makes representations about the volume of commercial banking business done in the United States and the number of locations in the United States were that business is done.

3. *U.S. Banking regulation*—The bank represents that it is subject to limited regulation by State or Federal banking authorities and intends to remain subject to that regulation.

4. *Jurisdiction*—The bank represents that it will appoint an agent for service of process and will consent to be jurisdiction of the state and Federal courts in the City and State of New York for any actions based on the offer or sale of the equity securities. The appointment and consent are irrevocable for as long as any of the securities are outstanding.

B. Status of foreign bank finance subsidiaries under the Act

As the number of foreign banks selling their own debt securities in the United States grew and they sought expanding markets for their securities, the banks found that some regulated institutions, such as insurance companies, either could not purchase the debt securities of a foreign issuer, or the amount of securities that they could purchase was limited by "legal investment" laws in some states.[11] Since many foreign banks felt that the participation of such institutional investors would be important to the success of an offering, the banks formed wholly-owned U.S. subsidiaries to offer or sell debt securities in the United States.[12]

As is the case of other finance subsidiaries, the finance subsidiaries of foreign banks may be considered investment companies for purpose of the Act. The typical finance subsidiaries raises capital for its parent or a company controlled by its parent by selling its own debt securities. The subsidiary then loans the offering proceeds to its parent or to a company controlled by its parent, and receives in consideration evidence of indebtedness, such as promissory notes, from the parent or controlled company. These evidences of indebtedness may be considered investment securities under the Act,[13] and if those investment securities held by the finance subsidiary amount to more than 40% of its total assets, the finance subsidiary is considered an investment company under section 3(a)(3) of the Act unless excepted or exempted by some other section of the Act.[14] The Commission has found that an exception from the definition of investment company is not available to foreign bank finance subsidiaries under section 3(b)(3) of the Act [15 U.S.C. 80a-3(b)(3)] because that section is intended to apply only to the subsidiaries of industrial companies.[15]

Like its foreign bank parent, before offering or selling its own securities in the United States, a finance subsidiary that comes within the definition of investment company must either register as such with the Commission [16] or apply for an order under section 6(c) for an exemption from the Act.[17] The first exemption allowing a foreign bank finance subsidiary to offer or sell debt securities in the United States was granted in March, 1980.[18] The representations made by that finance subsidiary and by subsequent applicants are essentially the same as the representatives made by their foreign bank parents, except for the additional representation that any securities sold by the subsidiary will be unconditionally guaranteed by the parent and the guarantee will rank equally with other guarantees of the parent and, with certain exceptions, with all other unsecured, unsubordinated indebtedness of the parent bank and superior to the rights of shareholders.[19] Like the representations made by the foreign banks, the representations made by the foreign bank finance subsidiaries have not changed a great deal from those made by the first finance subsidiary.

Since 1979, the Commission has granted an average of twenty exemptions from the Act each year to foreign banks and their finance subsidiaries that intend to issue their own debt securities in the United States. Given the frequency and now routine nature of these applications, the Commission believes that it is appropriate to propose a rule and related form to allow foreign banks and their finance subsidiaries to offer or sell their own debt securities and non-voting preferred stock in the Unied States without registering as investment companies.[20] If the proposal is adopted, a foreign bank or finance subsidiary that is the subject of a prior exemptive order could either rely on the rule or continue to rely on the order. Although the proposed rule would not exempt the offer or sale of equity securities in the United States by foreign banks, this release does request comment on the conditions that should apply to such offerings in an applications context and in any future rule or rule amendment.

Discussion

Proposed rule 6c-9 would provide an exemption from section 7 of the Act for foreign banks and their finance subidiaries to offer or sell their own debt securities or non-voting preferred stock in the United States without registering as investing companies. As explained below, the exemption would depend upon the type of offeror, the type of security being offered, and the type of offering. The exemption would also depend upon a foreign bank and any

[11] For example, the New York Insurance Law, which applies to any insurance company authorized to do business in New York, provides that an insurance company may not purchase debt securities of foreign issuers in an aggregated amount that exceeds 1% of its "admitted assets" (N.Y. Ins. section 1404(a)(8)(C) McKinney (1985)).

[12] The Commission is offering no opinion on whether debt securities of such finance subsidiaries would meet any state law requirements regarding permissible investments by regulated institutions.

[13] Section 2(a)(36) of the Act [15 U.S.C. 80a-2(a)(36)] defines "security" to include, *inter alia*, any note or evidence of indebtedness. *See* supra note 2. *See also* release proposing revisions to rule 6c-1, Investment Company Act Release No. 12679 (September 21, 1982) [47 FR 42578] at note 2 and accompanying text.

[14] *See supra* note 2. The Commission has provided an exemption from the definition of investment company in rule 3a-5 [17 CFR 270.3-5] for the finance subsidiaries of parents not coming within the definition of investment company or that have been exceped or exempted by Commission order by section 3(b) or by the rules and regulations under section 3(a). That exemption is not available to the finance subsidiaries of foreign banks, however, because foreign banks are considered investment companies under the Act. *See* release proposing amendments to rule 6c-1, Investment Company Act Release No. 12679 (September 21, 1982) [47 FR 42578] at note 17.

[15] Section 3(b)(3) excepts an issuer whose outstanding shares (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company by section 3(b)(1) or 3(b)(2). *See supra* notes 5 and 6.

[16] The domestic finance subsidiary of a foreign bank that is considered an investment company and that proposes, *inter alia*, to "offer for sale, sell, or deliver after sale, by the use of mails or any means or instrumentality of interstate commerce, any security or any interest in a security" is required by section 7(a) of the Act [15 U.S.C. 80a-7(a)] to register with the Commission. *See supra* note 7 for a discussion of the registration requirements for a foreign finance subsidiary that could be considered a foreign investment company.

[17] *See supra* note 8.

[18] *See* notice of application and order for Credit Lyonnais North America, Investment Company Act Release Nos. 11040 (February 8, 1980) [45 FR 10101] and 1071 (March 6, 1980).

[19] *Compare* notice of application and order for Credit Lyonnais North America, *supra* note 18 *with* notice of application and order for Kansallis-Osake Pankki, *supra*, note 9.

[20] The reasons for including the offer or sale of non-voting preferred stock are discussed under *Type of security offered infra*.

finance subsidiary incorporated or organized under the laws of a country other than the United States appointing an agent located in the United States for service of process by filing proposed form N-6C9 with the Commission.

1. Type of Offeror

Two types of offerors could rely on the proposed rule—foreign banks and their finance subsidiaries.

a. *Definition of foreign bank.* A "foreign bank" would be defined as a banking institution incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof. The rule would also require that the bank be primarily engaged in accepting demand deposits and making commercial loans.

The requirement that the bank be regulated as such by its home country's government or an agency of that government is intended to ensure that the bank is engaged primarily in the business of banking—a standard representation made in the applications relating to debt offerings by foreign banks.[21] The rule would also require that the bank be primarily engaged in commercial banking. The proposed rule defines "primarily engaged in commercial banking activities" as primarily engaged in accepting demand deposits and making commercial loans, the definition of bank that appears in the Bank Holding Company Act of 1956.[22]

b. *Definition of a finance subsidiary of a foreign bank.* The proposed rule would define a "finance subsidiary of a foreign bank" as a subsidiary meeting the conditions of paragraph (a) of rule 3a-5 under the Act. As in the exemptive orders, the subsidiary would have to be a wholly-owned subsidiary of its parent bank [23] and the securities that it offers or sells in the United States would have to be unconditionally guaranteed by that bank. In addition, the subsidiary would have to comply with the other conditions of rule 3a-5 that are intended to ensure that its primary purpose is to act as a conduit for its parent—not to engage in investment company activities. Any convertible or exchangeable securities issued by the subsidiary would have to be convertible or exchangeable only for securities issued by its parent or for other debt securities or non-voting preferred stock issued by the subsidiary and unconditionally guaranteed by the parent.[24] The subsidiary would have to remit at least 85% of any offering proceeds to its parent or a company controlled by its parent as soon as practicable but in no event later than six months after receipt.[25] In the intervening six month period and with the remaining 15%, the subsidiary could not invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its parent or a company controlled by its parent or debt securities exempted from the Securities Act by section 3(a)(3) of the Act [15 U.S.C. 77c(a)(3)].[26]

For purposes of applying these conditions to the finance subsidiaries of foreign banks, the proposed rule would redefine the terms "finance subsidiary", "parent company", and "company controlled by a parent company" that are used in rule 3a-5 so that the subsidiary or a company controlled by the parent company could be owned by only one foreign bank that could in turn be owned in whole or in part by a foreign government or a political subdivision of a foreign government.

Although rule 3a-5 permits a finance subsidiary or a company controlled by the parent company to be owned by multiple parents in partnership or as a joint venture, rule 6c-9 would limit ownership of a foreign bank finance subsidiary and a company controlled by a parent company to a single parent because there has been no indication that there is any need to furnish an exemption for debt offerings that are made by a finance subsidiary that is owned by more than one foreign bank. Nor has there been any indication that there is any need to draft the exemption so that offering proceeds may be remitted to a company that is controlled by more than one foreign bank. The Commission is, however, soliciting comment on whether rule 6c-9 should permit ownership by multiple bank parents of the subidiary or of the recipient of the offering proceeds.

The exemption provided by rule 3a-5 is available only to the finance subsidiaries of U.S. or foreign private issuers. The rule's exemption is limited to subsidiaries of these types of issuers because a foreign government parent and its subsidiaries might be immune from suit.[27] While the Commission is still concerned about that possibility, in view of the other conditions of proposed rule 6c-9 that are discussed below, the Commission believes that the proposed rule should provide an exemption for the finance subsidiaries of both government and non-government owned foreign banks.

2. Type of security offered

Rule 6c-9 would provide an exemption for foreign banks and their finance subsidiaries [28] to offer or sell their own debt securities and non-voting preferred stock in the United States. As discussed above, until recently, the Commission had granted exemptions from the Act only where the banks and subsidiaries intend to offer or sell debt securities in this country. The proposed rule would permit the offer or sale of non-voting preferred stock as well, because non-voting preferred stock has many of the characteristics of a debt instrument. For example, it traditionally has liquidation and dividend preferences over other equity securities; its liquidation value is constant while the liquidation value of other equity securities fluctuates with the value of the underlying assets; and it is priced and traded in a manner similar to a debt instrument.

As noted above, three foreign banks were recently granted exemptions from the Act to sell their common stock in the United States. Since these are the first such exemptions, the Commission is not including equity offerings, other than offerings of non-voting preferred stock, in proposed rule 6c-9 at this time. However, the Commission is soliciting comment on the conditions that should apply to equity offerings since the rule could be amended or a new rule adopted, to provide an exemption for such offerings. In particular, comment is requested on whether an exemption from the Act should be limited to foreign issuers that have registered their equity securities under the Securities Act or that have a continuing reporting

[21] Although applicants also typically represent that the regulation to which they are subject is similar to that to which U.S. banks are subject, the Commission has not included such a provision in the rule since it is too subjective a standard in the context of an exemptive rule.

[22] *See* 12 U.S.C. 1841(c).

[23] Rule 3a-5 requires that all of the subsidiary's securities, other than directors' qualifying shares or debt securities or non-voting preferred stock unconditionally guaranteed by the parent, must be owned by the parent or a company controlled by the parent. *See* paragraph (b)(1)(i) of rule 3a-5.

[24] *See* paragraph (a)(4) of rule 3a-5.

[25] *See* paragraph (a)(5) of rule 3a-5.

[26] *See* paragraph (a)(6) of rule 3a-5. "Government security" is defined in section 2(a)(16) of the Act [15 U.S.C. 80a-2(a)(16)] to mean any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

[27] *See* Investment Comapany Act Release No. 14275 (December 14, 1984) [49 FR 49114] adopting proposed revisions to rule 6c-1 and renumbering the rule as 3a-5.

[28] The exemption is intended to apply only to offerings of securities issued by the bank or finance subsidiary, not to securities representing interests in a collective trust fund or similar investment pool maintained by the bank.

obligation under the Securities Exchange Act of 1934 [15 U.S.C. 78 *et seq.*] ("Exchange Act").[29] Comment is also requested on whether the issuer of equity securities should maintain a substantial presence in the United States. For example, should the exemption be conditioned upon a foreign bank maintaining a branch or agency within the United States that is regulated by state or Federal banking authorities? [30]

3. Type of offering

As indicated above, in considering whether to grant exemptions for the offer or sale of debt securities by foreign banks and their finance subsidiaries in this country, the Commission has focused upon whether the securities will be registered under the Securities Act, the quality of the securities and the type of disclosure document that will be delivered to purchasers. The proposed rule, in focusing upon the same concerns, would make an exemption available for registered offerings and, under certain conditions, unregistered offerings.

Under the rule, registration of the debt securities or non-voting preferred stock that a foreign bank or a foreign bank finance subsidiary intends to offer or sell in the United States and appointment of an agent for service of process on form N-6C9 would entitle that bank or subsidiary to an exemption from registration under the Investment Company Act. In view of the comprehensive disclosure requirements that are applicable to a registered offering,[31] the Commission does not believe that the offeror should have to comply with any other conditions to exempt the offering from the Investment Company Act.

However, if the foreign bank or its subsidiary does not intend to register its securities under the Securities Act and intends instead to rely on an available exemption from the registration requirements of that Act, the proposed rule would exempt the bank or its subsidiary from registration under the Investment Company Act only if the securities are of high quality and an agent for service of process is appointed. "High quality" would be defined to be one of the two highest ratings that may be assigned by a nationally recognized statistical rating organization ("NRSRO").[32] The rule would provide that the securities being offered or sold would have to receive a high quality rating from at least two NRSROs that are not affiliated persons as defined in section 2(a)(3)(C) of the Act [15 U.S.C. 80a-2(a)(3)(C)] of the issuer of or of any issuer, guarantor or provider of credit support for the securities.[33]

While applicants have represented that offering memoranda will be supplied to prospective pruchasers in such unregistered offerings, the issuer may not be required to disclose the information required of issuers in registered offerings. Since there may not be specific disclosure requirements under the Securities Act with respect to all unregistered offerings, the Commission believes an exemption from the Investment Company Act should be available only if the securities are of high quality and an agent for service of process is appointed.

The quality representations typically found in the applications—that the securities being offered would be assigned one of the three highest ratings by at least one major rating agency—have been reformulated in the proposed rule:

(1) To require that the securities be assigned one of the two highest ratings, rather than one of the three highest ratings; [34]

(2) To conform to other rules and regulations under the Federal securities laws by referring to NRSRO instead of "major rating agency"; [35]

(3) To ensure that the NRSRO does not have a significant interest in the securities being rated by requiring that the NRSRO not control or be controlled by or under common control with the issuer or any issuer, guarantor or provider of credit support for the securities being rated; and

(4) To require that the high quality rating be assigned by at least two—instead of one—NRSRO.

4. Appointment of agent

As a condition for exemption, proposed rule 6c-9 would require any foreign bank that intends to offer or sell its debt securities or non-voting preferred stock directly or indirectly in the United States to have filed proposed form N-6C9 with the Commission appointing an agent located in the United States for service of process for as long as the bank has any debt securities or non-voting preferred stock outstanding. The rule would also require the bank to file an amended form in the event that the bank appoints a successor agent. Where the bank is offering or selling its securities indirectly in the United States through a finance subsidiary that is incorporated or organized under the laws of a jurisdiction other than the United States or any State, the subsidiary would also be required to file the form and keep it current. As in the prior exemptive orders, the purpose of requiring the foreign bank or subsidiary to appoint an agent for service of process in any action based on the offer or sale of the securities is to ensure that the Commission or a private plaintiff would be able to serve the defendant with notice of the proceeding.[36]

Cost/Benefit of Proposed Action

Proposed rule 6c-9 and form N-6C9 would not impose any significant additional burdens on foreign banks or foreign bank finance subsidiaries and would significantly reduce the costs that they already incur by eliminating the

[29] *See* sections 12 and 13 of that Act [15 U.S.C. 781 and 78m].

[30] *See, e.g.*, section 4 of the International Banking Act of 1978 [12 U.S.C. 3102].

[31] *See* registration statement forms F-1 through F-4 [17 CFR 239.31-239.34] which specify the information and documents that must be furnished by foreign private issuers in order to register their securities under the Securities Act; *see also* Schedule B [15 U.S.C. § 77aa] which specifies the information and documents that must be furnished by foreign governments in order to register their securities under that Act.

[32] To conform to other rules and regulations under the federal securities laws, the proposed rule would use the term NRSRO, as that term is used in the Commission's net capital rule, to describe the rating agency. *See* rule 15c3-1(c)(2)(vi)(F) under the Exchange Act [17 CFR 240.15c3-1(c)(2)(vi)(F)]. At the present time, the following organizations are considered NRSROs: Duff and Phelps, Inc.; Fitch Investors Services, Inc.; Moody's Investors Services, Inc.; McCarthy, Crisanti & Maffei; and Standard & Poors Corporation.

[33] Section 2(a)(3)(C) of the Act defines affiliated person to include a person controlling, controlled by or under common control with another person. Control is defined in section 2(a)(9) of the Act [15 U.S.C. 80a-2(a)(9)] as the power to exercise a controlling influence over the management or policies of a company, unless that power arises solely as a result of an official position with that company. Direct or indirect ownership of more than 25% of the voting securities of a company carries a presumption of control over that company.

As noted in a recent release, although the concept of independence is implicit in the term NRSRO, the Commission believes that for purposes of providing an exemption from some or all of the provisions of the Act, independence should be defined within the context of the Act. *See* Investment Company Act Release No. 14983 (March 12, 1986) [51 FR 9773] adopting rule 2a-7 under the Act [17 CFR 270.2a-7], the rule that permits money market funds to use the amortized cost method of valuation or the penny-rounding method of pricing under certain conditions, at note 17 and accompanying text.

[34] Comment is requested, however, on whether the proposed rule should require that the securities receive one of the top three ratings as represented by applicants.

[35] *See* Investment Company Act Release No. 14607 (July 1, 1986) [50 FR 27982] proposing, *inter alia*, amendments to rule 2a-7.

[36] Comment is requested, however, on whether this purpose can be achieved by some other means that does not require a filing with the Commission.

need to file exemptive applications. The Commission would also benefit because its staff would no longer have to review exemptive applications in this area.

The Commission specifically invites comments on its assessments of the costs and benefits associated with the proposal, including estimates of any costs and benefits perceived by commentators.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that proposed rule 6c-9 and form N-6C9 will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as shown.

1. The authority citation for Part 270 is amended by adding the following citations:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a-37, 80c-89 * * * 270.6c-9 also issued under secs. 6(c) [15 U.S.C. 80a-6(c)] and 38(a) [15 U.S.C. 80a-37(a)].

2. By adding § 270.6c-9 to read as follows:

§ 270.6c-9 Exemption for the offer or sale of debt securities and non-voting preferred stock in the United States by foreign banks and subsidiaries organized to finance the operations of foreign banks.

(a) Notwithstanding section 7 of the Act [15 U.S.C. 80a-7], a foreign bank or a finance subsidiary of a foreign bank may offer or sell its own debt securities or non-voting preferred stock by the use of the mails or any means or instrumentality of interstate commerce ("offer or sale") without registering as an investment company; *Provided* that:

(1) The debt securities or non-voting preferred stock are registered under the Securities Act of 1933; or

(2) The debt securities or non-voting preferred stock are:

(i) Offered or sold pursuant to an exemption from the registration requirements of the Securities Act of 1933; and

(ii) Of high quality as determined by at least two nationally recognized statistical rating organizations that are not affiliated persons, as defined in section 2(a)(3)(C) [15 U.S.C. 80a-2(a)(3)(C)] of the Act, of the issuer of or of any insurer, guarantor or provider of credit support for the debt securities or non-voting preferred stock; and

(3) Form N-6C9 [17 CFR 274.304] and any required amendments thereto shall have been filed with the Commission by:

(i) The foreign bank offering or selling debt securities or non-voting preferred stock in the United States;

(ii) The finance subsidiary of a foreign bank offering or selling debt securities or non-voting preferred stock in the United States, if such finance subsidiary is organized under the laws of a jurisdiction other than the United States or any State; and

(iii) The foreign bank parent unconditionally guaranteeing the payment of principal, interest, and premium on the debt securities or the payment of dividends, liquidation preferences, and sinking fund payments on the non-voting preferred stock offered or sold by its finance subsidiary in the United States.

(b) For purposes of this rule:

(1) "Finance subsidiary of a foreign bank" means a foreign bank subsidiary meeting the requirements of paragraph (a) of rule 3a-5 [17 CFR 270.3a-5].

(2) "Foreign bank" means a banking institution incorporated or organized under the laws of a country other than the United States that is:

(i) Regulated as such by that country's government or any agency thereof; and

(ii) Primarily engaged in commercial banking activity.

(3) "High quality" means one of the two highest rating categories (within which there may be sub-categories or graduations indicating relative standing) that may be assigned by a nationally recognized statistical rating organization.

(4) "Nationally recognized statistical rating organization" means any nationally recognized statistical rating organization, as used in rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 [17 CFR 240.15c3-1(c)(2)(vi)(F)].

(5) "Primarily engaged in commercial banking activity" means primarily engaged in accepting demand deposits and making commercial loans.

(c) For purposes of determining whether a foreign bank subsidiary meets the requirements of paragraph (a) of rule 3a-5:

(1) "Finance subsidiary" means any corporation:

(i) Whose parent company owns all of its securities other than directors' qualifying shares or debt securities or non-voting voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (a)(3) of rule 3a-5; and

(ii) The primary purpose of which is to finance the business operations of its parent company or companies controlled by its parent company.

(2) "Parent company" means a foreign bank.

(3) "Company controlled by a parent company" means any corporation:

(i) That is either a foreign bank or is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or the rules or regulations under section 3(a); and

(ii) All of whose securities other than directors' qualifying shares or debt securities or non-voting preferred stock are owned by a foreign bank.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Subpart D of Part 274 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as shown:

3. The authority citation for Part 274 is amended by adding the following citations:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. * * * § 274.304 also issued under secs. 6(c) [15 U.S.C. 80a-6(c)] and 38(a) [15 U.S.C. 80a-37(a)].

4. By adding § 274.304 to read as follows:

§ 274.304 Form N-6C9, appointment of agent for service of process by foreign banks and their finance subsidiaries offering or selling debt securities or non-voting preferred stock in the United States under rule 6c-9 of the Investment Company Act of 1940.

(a)(1) Form N-6C9 shall be filed by any foreign bank relying on rule 6c-9 (§ 270.6c-9 of this chapter) to offer or sell its debt securities or non-voting preferred stock in the United States directly or through a finance subsidiary. Where the finance subsidiary is incorporated or organized under the laws of a jurisdiction other than the United States or any State, the subsidiary must also file the form.

(2) Rule 6c-9 permits a foreign bank or the bank's finance subsidiary to offer or sell its own debt securities or non-voting preferred stock in the United States without registering as an investment company under the Investment Company Act of 1940, provided, *inter alia*, that form N-6C9 has been filed with the Commission.

(b) Form N-6C9 shall be filed in duplicate original.

By the Commission.

Jonathan G. Katz,

Secretary.

September 17, 1986.

BILLING CODE 8010-01-M

FORM N-6C9

U.S. Securities and Exchange Commission
Washington, D.C. 20549

APPOINTMENT OF AGENT FOR SERVICE OF PROCESS BY FOREIGN BANKS AND THEIR FINANCE SUBSIDIARIES OFFERING OR SELLING DEBT SECURITIES OR NON-VOTING PREFERRED STOCK IN THE UNITED STATES

General Instructions

I. Form N-6C9 shall be filed by any foreign bank relying on rule 6c-9 (§ 270.6c-9 of this chapter) to offer or sell its own debt securities or non-voting preferred stock in the United States directly or through a finance subsidiary. Where the finance subsidiary is incorporated or organized under the laws of a jurisdiction other than the United States or any State, the subsidiary must also file the form.

Rule 6c-9 permits a foreign bank or the bank's subsidiary to offer or sell its own debt securities or non-voting preferred stock in the United States without registering as an investment company under the Investment Company Act of 1940, provided, inter alia, that form N-6C9 has been filed with the Commission.

II. Form N-6C9 shall be filed in duplicate original.

Text of Form

1. The (Name of foreign entity)

"Filer"

is (select one)

☐ a foreign bank offering or selling debt securities or non-voting preferred stock in the United States;

☐ a finance subsidiary of a foreign bank offering or selling debt securities or non-voting preferred stock in the United States; or

☐ a foreign bank parent unconditionally guaranteeing the payment of principal, interest, and premium on the debt securities or the payment of dividends, liquidation preferences, and sinking fund payments on the non-voting preferred stock offered or sold by its finance subsidiary in the United States.

2. This is (select one)

☐ an original filing for the Filer in the capacity indicated above; or

☐ an amended filing for the Filer in the capacity indicated above.

3. The Filer is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the Filer is organized or incorporated)

and has its principal place of business at (Address in full)

4. The Filer hereby designates and appoints, for as long as any of its debt securities or non-voting preferred stock referred to below are outstanding, (Name of Agent)

("Agent") located at (Address in full)

, USA

as the agent of the Filer upon whom process may be served in any action brought against the Filer arising out of or based on the offer or sale of debt securities or non-voting preferred stock in any place subject to the jurisdiction of any State or of the United States

5. The Filer hereby consents, stipulates and agrees, for as long as any such debt securities or non-voting preferred stock are outstanding, (a) that any such action may be commenced against it by the service of process upon the Agent and the forwarding by the Agent of a copy thereof by registered mail to it at the last address of record on file with the Agent, and (b) that such service and forwarding of process shall be held by any appropriate court to be as valid and binding as if personal service had been made

SEC 2174 (9-86)

6. The Filer hereby stipulates and agrees, for as long as any such debt securities or non-voting preferred stock are outstanding, to appoint a successor agent for service of process and file an amended form N-6C9 if the Filer discharges the Agent or the Agent is unwilling or unable to continue to accept service on behalf of the Filer;

The Filer certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the

City of _____ Province (or State) of _____

this _____ day of _____ 19 _____ A.D.

Filer By (Signature and Title)

This statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions:

1. The power of attorney, consent, stipulation and agreement shall be signed by the Filer, its principal executive officer or officers, at least a majority of the board of directors or persons performing similar functions, and its authorized Agent in the United States. Where the Filer is a limited partnership the power of attorney, consent, stipulation and agreement shall be signed by a majority of the board of directors of any corporate general partner signing the power of attorney, consent, stipulation and agreement.

2. The name of each person who signs form N-6C9 shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs form N-6C9. Each copy shall be manually signed by the persons specified in Instruction 1. Where any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of the form. If any name is signed pursuant to a power of attorney, a manually signed copy of each power of attorney shall be filed with each copy of the form.

NOTE: The persons executing this power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgements in the jurisdiction in which it is executed and acknowledge that they executed it on behalf of the Filer as its free and voluntary act. The acknowledgement should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgement suggested below should be used only if consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgement to meet applicable requirements shall not affect the validity or effect of the foregoing power of attorney, consent, stipulation and agreement.

Province (or State) of _____)
) ss.
County of _____)

I (Name) _____, a (Official position of person administering acknowledgement)

_____, in and for (said County in) the Province (or State) aforesaid, do hereby certify that foregoing named persons personally appeared before me this day, stated that they are the same persons named in the foregoing instument, that they serve in the capacity stated in the foregoing instrument, that they have been duly authorized to execute said instrument for the Filer, and that they signed and sealed said instrument for and on behalf of the Filer as its free and voluntary act for the uses and purposes set forth.

Given under my hand and seal this _____ day of _____ , 19_____ A.D.

Signature of official: _____

(Seal)

Official position: _____

My Commission (or Office) expires:

(Date) _____

BILLING CODE 8010-01-C

Regulatory Flexibility Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 6c-9 and form N-6C9 under the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a-1 *et seq.*], set forth in Investment Company Act Release No. 15314, if promulgated, will not have a significant impact on a substantial number of small entities. The reason for this certification is that it does not appear that a substantial number of small entities would be affected by the rule. Currently, foreign banks and foreign bank finance subsidiaries ("issuers") that offer or sell their securities in the United States must apply for an exemption from the Act or register with the Commission as an investment company. The Commission receives an average of 20 applications a year from these issuers; virtually all of them from large entities. It does not appear, therefore, that adoption of rule 6c-9 and form N-6C9 would affect a substantial number of small entities.

Dated: September 17, 1986.

John S.R. Shad,

Chairman.

[FR Doc. 86-21815 Filed 9-25-86; 8:45 am]

BILLING CODE 8010-0-1-M

17 CFR Part 275

[Rel. No. IA-1035; File No. S7-24-86]

Financial and Disciplinary Information That Investment Advisers Must Disclose to Clients

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is soliciting public comment on, and information about the costs and benefits of, a rule under the Investment Advisers Act of 1940 to codify an investment adviser's fiduciary obligation to disclose material facts to clients with respect to any precarious financial condition and certain disciplinary events. The proposed rule sets forth a general standard and provides guidance on some of the disciplinary events that must be disclosed. By codifying the obligation and providing greater certainty to advisers in fulfilling it, the rule should help ensure that clients are provided with material facts about these conditions and events.

DATE: Comments on the proposed rule must be received on or before November 21, 1986.

ADDRESS: Comments must be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-24-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Thomas S. Harman, Special Counsel, or Debra Kertzman, Attorney, (202) 272-2107, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing for public comment Rule 206(4)-4 under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*] ("Advisers Act") which would require an adviser to disclose to clients material facts about any financial condition reasonably likely to impair the adviser's ability to meet contractual commitments to clients (referred to hereafter as "precarious financial condition") and certain legal or disciplinary events ("referred to hereafter as "disciplinary events"). The proposed rule would codify the Commission's longstanding interpretation that section 206 of the Advisers Act [1] requires an investment adviser to disclose this information to clients.[2] In addition to codifying this general standard, the rule would define certain recent disciplinary events that envolved the adviser or certain key personnel, as material. While providing guidance on some of the types of disciplinary events that advisers must disclose, the rule also would make clear that other disclosures might be required under the general standard and that compliance with the rule would not relieve advisers form other disclosure obligations.

Background

The Investment Advisers Act of 1940 reflects Congressional recognition, based upon knowledge that advisory clients place trust and confidence in the ability and integrity of their adviser, of the "delicate fiduciary nature of an investment advisory relationship."[3] This reliance on the adviser, in a relationship which is not arms-length, was acknowledged by the Supreme Court in *SEC* v. *Capital Gains*, where the Court held that as a fiduciary an investment adviser owes clients an affirmative duty of "utmost good faith and full and fair disclosure of material facts," as well as an affirmative obligation to "employ reasonable care to avoid misleading his clients."[4]

To prevent advisers from misleading clients, among other things, Congress, in section 206 of the Act, proscribed any practice which operates as a fraud or deceit upon advisory clients. The Supreme Court has interpreted fraudulent and deceptive practices under section 206 to include the nondisclosure of material facts.[5] Thus,

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[1] Section 206 [15 U.S.C. 80b-6] of the Advisers Act, in relevant part, states that: It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly- (1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; . . . (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purpose of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

[2] The Commission has held in enforcement proceedings that an adviser has a fiduciary obligation under section 206 to disclose its precarious financial condition or certain disciplinary events to clients. *See Intersearch Technology*, [1974-75 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶80, 139 at 85, 178; *Dynamics Letter*, Investment Advisers Act Rel. No. 148 (Sept. 4, 1963); *In the Matter of Jesse Rosenblum*, Investment Advisers Act Rel. No. 913 (May 17, 1984). The Commission has also stated, in the rulemaking resulting in the "brochure rule," Rule 204-3 [17 CFR 275.204-3], that the omission of material facts by an adviser could constitute a fraudulent or deceptive act or practice under Section 206. Investment Advisers Act Rel. No. 442 (March 5, 1974). *Accord* Investment Advisers Act Rel. Nos. 601 and 664 (July 27, 1977, and Feb. 7, 1979).

[3] *SEC* v. *Capital Gains*, 375 U.S. 180, 191 (1963). In the legislative hearings preceding adoption of the Advisers Act, investment advisers emphasized their relationship of "trust and confidence" with their clients. For example, Robert H. Loomis, President of Loomis, Sayles & Co., stated that "the investment adviser's livelihood depends upon public trust and confidence." Hearings on S. 3580 before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. Part 1, 760 (1940).

Moreover, Congressional awareness of the confidential nature of the adviser-client relationship is reflected in section 210 of the Advisers Act [15 U.S.C. 80b-10] which contains provisions, unique among the federal securities laws, designed to protect information about advisory clients. Hearings on S. 3580, *supra*, at 719. *See also* S. Rep. No. 1775, 76th Cong., 3d Sess. 23 (1940).

[4] *Capital Gains*, *supra* note 3, at 194.

[5] *Capital Gains*, *supra* note 3, at 198-199. In holding that nondisclosure of material facts was one variety of fraud or deceit, the Supreme Court asserted that the essential purpose of the Advisers Act was to "substitute a philosophy of full disclosure for the philosophy of caveat emptor."

the broad proscriptions of section 206 against fraudulent and deceptive acts and practices, as interpreted by the Supreme Court, impose an enforceable fiduciary obligation upon an adviser to disclose material facts.[6]

Congress amended section 206, in 1960, to grant the Commission specific rulemaking authority to define "fraudulent, deceptive or manipulative acts and practices," [7] and to prescribe means "reasonably designed" to prevent such acts and practices.[8] The Commission now proposes through rulemaking to codify an adviser's general duty to disclose material facts about any precarious financial condition and certain disciplinary events, and to define some of the disciplinary events that must be disclosed. While the rule does not specify what facts must be disclosed, other than material facts, about these conditions and events, it does define some of the events that would be material and must be disclosed to clients under section 206.[9]

Under section 206, a financial condition and a disciplinary event would be required to be disclosed whenever there is a substantial likelihood that a reasonable client would consider it important in deciding the matter before him.[10] An adviser's precarious financial condition is important to clients because the adviser may not be able to provide an adequate level of service to clients and, in the event of the adviser's insolvency or inability to continue business, clients might lose prepaid fees or be forced to incur substantial costs and inconvenience in selecting another adviser.[11] A prior disciplinary event involving an adviser would be important to clients when it reflects upon the adviser's integrity or when it affects the degree of trust and confidence a client would place in the adviser.[12] Moreover, a disciplinary event which imposes limitations on an adviser's activities [13] also would reflect upon the adviser's ability to fulfill contractual commitments and thus would be important to clients.

Because it is substantially likely that a reasonable client would consider the adviser's precarious financial condition or certain disciplinary events important in choosing, or continuing to retain, an adviser, and because the nondisclosure of these conditions or events could mislead or deceive clients in their evaluation of the adviser's integrity or ability, Rule 206(4)–4 would mandate disclosure of any material facts with respect to these conditions or events. The proposed rule would codify the Commission's interpretation of section 206.[14] By specifying certain disciplinary events [15] about which material facts must be disclosed, the rule would help ensure that clients are provided with facts important to their evaluation of the adviser's ability and integrity, and also would prescribe means "reasonably designed" to prevent fraud or deception.

Discussion

Because section 206 applies to all advisers, the disclosure obligation codified in proposed Rule 206(4)–4 would apply to both registered advisers and those not required to be registered. Paragraph (a) of Rule 206(4)–4 sets forth a general disclosure standard.

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[6] In *Transamerica Mortgage Advisers* v. *Lewis*, 444 U.S. 11, 17 (1979), the Supreme Court stated that the legislative history of the Investment Adviser Act" leave no doubt that Congress intended to impose enforceable fiduciary obligations under Section 206." Moreover, in *Capital Gains, supra* note 3, at 198, the Supreme Court held that the Adviser Act's omission of a specific proscribtion against nondisclosure was not intended to limit the Commission's authority to enjoin material nondisclosures under the antifraud provisions. The fraud enjoined in *Capital Gains* was, in fact, a nondiclosure.

[7] In granting the Commission authority to enact rules to define the scope of the terms "fraudulent, deceptive, and manipulative" activities, Congress intended to clarify that the Commission's enforcement of the antifraud provisions was not to be limited by common law concepts of fraud and deceit. S. Rep. No. 1760, 86th Cong., 2d Sess. 4, 8 (1960).

[8] The 1960 amendments also extended the scope of Section 206 to include unregistered advisers and to specifically prohibit "manipulative practices."

[9] The Commission is proposing this rule to provide advisers with guidance on these federally-established fiduciary standards of conduct. The Supreme Court, in several decisions interpreting section 206 and other antifraud provisions of the federal securities laws, has held that Congress intended the Advisers Act to establish federal fiduciary standards to govern the conduct of advisers. *Transamerica, supra* note 6, at 17; *Santa Fe Industries* v. *Green*, 430 U.S. 462 U.S. 471 n.11 (1977); *Burks* v. *Lasker*, 441 U.S. 471, 481–82 n.10 (1979).

[10] In *TSC Industries* v. *Northway, Inc.*, 426 U.S. 483 (1976), a case involving Section 14(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78n(a)] ("Exchange Act"), the Supreme Court stated that "an omitted fact is material and required to be disclosed whenever there is a substantial likelihood that a reasonable investor would consider it important in deciding the matter before him." In *SEC* v. *Wall Street Publishing*, 591 F. Supp. 1070, 1082 (D.D.C. 1984), a case under Section 206 of the Advisers Act involving the nondisclosure of material facts, the court applied the *TSC* Standard of materiality.

[11] The Commission has decided, both in rulemaking and in enforcement proceedings, that an adviser's precarious financial condition is important to clients. *See* note 2, *supra*.

See generally Item 401(f)(1) of Regulation S–K [17 CFR 229.401(f)(1)] (requiring registrants to disclose bankruptcy and insolvency proceedings that are material to an evaluation of the ability or integrity of management).

[12] The Commission has held, under Section 206, that a prior disciplinary proceeding involving an adviser is important to clints. *See Rosenblum, supra* note 2. Also, the Commission has required, as part of a settlement in a section 203 [15 U.S.C. 80b–3] disciplinary proceeding, disclosure of its disciplinary order to clients and prospective clients of an adviser. *See In the Matter of Professional Capital Management*, Investment Advisers Act Rel. No. 856 (April 22, 1983); *In the Matter of Penny Stock Newsletter Inc.*, Investment Advisers Act Rel. No. 946 (Dec. 19, 1984); *In the Matter of Arthur Carlson, Investment Advisers Act Rel. No. 947 (Dec. 24, 1984).*

[13] *See Arthur Carlson, supra* note 12, where the Commission, as part of a settlement in a section 203 disciplinary proceeding, suspended the registration of an adviser for nine months and barred the adviser from associating with any investment adviser for nine months.

[14] In prior enforcement proceedings involving section 206, not only did the Commission hold that these conditions and events were important, it also held that it would be fraudulent for the adviser not to disclose these conditions and events to clients. *See Rosenblum* and *Intersearch, supra* note 2.

The Commission recently reiterated this interpretation of section 206 in adopting revisions to Form ADV [17 CFR 279.1], the registration form for investment advisers, Part II of which specifies the disclosure to clients mandated by Rule 204–3, the "brochure rule." Investment Advisers Act Rel. No. 991 (Oct. 15, 1985). The Commission originally proposed that all disciplinary information reported to regulators in Part I of Form ADV be included in Part II of the Form. Investment Advisers Act Rel. No. 967 (April 24, 1985). When the Commission adopted the revisions to Form ADV, it did not include disciplinary disclosure provisions in Part II because disclosure of material disciplinary events was already required under section 206 independent of any rule or form requirement, paragraph (e) of the brochure rule makes clear that compliance with the rule's provisions does not relieve an adviser from other applicable disclosure obligations, and not all disciplinary information reported in Part I necessarily is important to clients.

[15] The Supreme Court in *Capital Gains, supra* note 3 at 195, held that the antifraud provisions of the Advisers Act were to be construed like the antifraud provisions of the Securities Act of 1933 ("Securities Act") and the Exchange Act. A majority of courts and the Commission found violations of section 17(a) of the Securities Act [15 U.S.C. 77q(a)], and sections 14(a) and 10(b) of the Exchange Act [15 U.S.C. 78n(a) and 78j(b)] and Rule 10b–5 thereunder [17 CFR 240.10b–5] for failure to disclose material facts about disciplinary events. *SEC* v. *Freeman*, [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,361, at 93,241 (N.D. Ill. 1978); *SEC* v. *Joseph Schlitz*, [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,464 at 93,692 (E.D. Wis. 1978); *Upton* v. *Trinidad Petroleum Corporation*, 468 F. Supp. 330, 337 (N.D. A1. 1979); *Sec.* v. *Kalvex, Inc.* 425 F. Supp. 310, 314–315 (S.D.N.Y. 1975); *Rafal* v. *Geneen*, [1972–73 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,505 at 92,440 (E.D. Pa. 1973). *Accord SEC* v. *American Board of Trade Inc.*, 751F.2d 529, 540–41 (2d Cir. 1984); *Freschi* v. *Grand Coal Venture* 767 F.2d 1041, 1048 n.9 (2d Cir. 1985). *But see SEC* v. *Lowe*, 556 F. Supp. 1359, 1370 (E.D.N.Y. 1983), 725 F.2d 892 (2d Cir. 1984), 105 S.Ct. 2557 (1985). The district court in *Lowe* refused to find a violation of section 206 for an adviser's failure to disclose criminal convictions in the absence of a Commission rule under section 204 [15 U.S.C. 80b–4] requiring it. While *Lowe* principally involved a First Amendment challenge to the Commission's authority to enforce its order revoking the registration of an advisory publisher, a collateral issue was whether Lowe was required under section 206 to disclose his criminal convictions to subscribers. While the Commission appealed the district court's holding on disclosure, neither the court of appeals nor the Supreme Court addressed this issue specifically on review.

Paragraph (a)(1) of the proposed rule would require disclosure of all material facts about a financial condition of an adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, while paragraph (a)(2) would require disclosure of all material facts about a legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. As discussed above, these conditions and events must be disclosed because it is substantially likely that a reasonable client would consider them important in deciding whether to retain a particular adviser or, if the client has already retained an adviser, in structuring their relationship. While under the proposed rule the precarious financial condition of any adviser would be material and required to be disclosed to clients under section 206, the Commission requests comment on whether there is a reasonable basis to limit the disclosure required under paragraph (a)(1) of the proposed rule to certain types of advisers, *e.g.*, advisers with custody of, or discretion over, client funds, or advisers who require prepaid advisory fees.

Paragraph (b) of Rule 206(4)–4 would provide guidance on the adviser's minimum disclosure obligation under paragraph (a)(2) by defining ceratin legal or disciplinary events involving the adviser or certian key personnel (for simplicity, referred to as "management person," as discussed below) as "material" within the meaning of the general disclosure obligation found in paragraph (a)(2), and thus requiring disclosure of all material facts about those events. Paragraph (b) would require disclosure of all material facts about the specified events unless more than ten years have elapsed from the time the event occurred. While the ten-year period corresponds to the ten-year period found in section 203(e)(2) of the Advisers Act [16] and Item 11 of Part I of Form ADV, the Commission requests comment on whether a different time period should be used, for example, the five-year period specified in Item 401(f) of Regulation S–K.[17]

The Commission has defined the legal and disciplinary events about which disclosure of all material facts must be made to include court actions (both civil and criminal), agency proceedings, and SRO proceedings, involving the adviser or a management person engaged in activities as, or being associated with, a broker-dealer, investment company, investment adviser, futures commission merchant, commodity trading adviser, commodity pool operator, bank, savings and loan association, or fiduciary. These activities generally follow those specified in section 203(e) of the Advisers Act and Item 11 of Form ADV. However, not all the legal or disciplinary events specified in section 203(e) or reported to regulators in Item 11 would be covered by paragraph (b) of the rule. Rather, paragraph (b) has been drafted to exclude violations not ordinarily material to a client in evaluating the adviser's ability or integrity. For example, agency and self-regulatory organization ("SRO") proceedings involving findings of investment-related violations would have to be disclosed under paragraph (b) only if a significant sanction were involved, *e.g.*, a bar, a suspension, or an SRO fine of more than $2,500.[18]

Paragraph (b)(1)(i) of the rule, which specifies the criminal actions that must be disclosed, is patterned after the format of Item 11A(1) of Part I of Form ADV and the statutory disqualification provisions of section 203(e)(2) of the Advisers Act. Under this format, disclosure is required for felony or misdemeanor convictions involving certain specified crimes relating generally to fraud or the unlawful taking of money or property. The Commission requests comment on whether other disclosures should be required, for example, disclosure of all felony convictions, or whether another format should be used. One alternative might be to require disclosure of convictions for crimes subject to fines or imprisonment of specified amounts. Commenters should consider whether this, or another alternative, could simplify the rule while achieving its purposes and, if so, what the appropriate thresholds should be.

Paragraph (c) of the proposed rule reflects the Commission's belief that for disclosure to be meaningful to clients, it must be timely.[19] The proposed rule's timing provision is patterned after the brochure rule's time of delivery requirement,[20] and would require that these material facts be provided promptly to existing clients and not less than 48 hours prior to entering into a contract (or, where certain conditions are met, no later than the time of entering into the contract) with prospective clients.

Paragraph (d) of the proposed rule defines certain of the rule's key terms. The term "management person" would include any person with the power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser or to determine the general investment advice given to clients. The term "found" means determined or ascertained in any adverse final SRO proceeding, administrative proceeding, or court action, including a consent decree.[21] Other definitions are based on definitions in Form ADV.[22]

Paragraph (e) of the proposed rule provides instructions for calculating the ten-year period for minimum disclosure. The proposed rule also states that the ten-year period in paragraph (B) is only a minimum disclosure requirement. Depending on the facts and circumstances, events occurring outside this period could be material to clients and, if so, must be disclosed under paragraph (a).

Finally, paragraph (f) states that compliance with paragraph (b) of the rule would not necessarily constitute compliance with the adviser's disclosure obligations under paragraph (a) of the rule. Depending on the facts and circumstances, events not specifically listed in paragraph (b) may nonetheless trigger the general disclosure obligation found in paragraph (a). For example, events involving persons other than management persons, or events other than those specified in paragraph (b) would have to be disclosed under paragraph (a) when material to a client's evaluation of the adviser's ability or integrity. Furthermore, this paragraph makes clear that the guidance provided in the rule is neither exclusive nor a substitute for the adviser's general fiduciary obligation to disclose material facts.[23]

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[16] Section 203(e)(2) [15 U.S.C. 80b–3(e)(2)] limits the statutory disqualification period for criminal convictions to ten years.

[17] Item 401(f), *supra* note 11, specifies a five-year period for disclosure about legal proceedings involving management.

[18] The $2,500 threshold is patterned after Exchange Act Rule 19d–1(c)(2) [17 CFR 240.19d–1(c)(2)] which excepts SROs from the obligation to report promptly disciplinary actions for designated minor violations.

[19] *In the Matter of Arleen Hughes*, 27 SEC 629, 639 (1948).

[20] 17 CFR 275.204–3(b). *See also* Investment Advisers Act Rel. No. 442, *supra* note 2.

[21] *See* Investment Advisers Act Rel. No. 991, *supra* note 14.

[22] The definition of "investment-related" is patterned after Item 11 of Form ADV and Section 203(e)(2)(B) of the Advisers Act [15 U.S.C. 80b–3(e)(2)(B)]; the definition of "involved" is patterned after Item 11 of Form ADV and section 203(e)(5) of the Advisers Act; and the definition of "SRO" is identical to the definition of this term in the General Instructions to Form ADV.

[23] The legislative history of section 206(4) of the Advisers Act, the provision granting the Commission rulemaking authority to define and

Continued

Cost Benefit of the Proposed Action

Because the proposed rule would codify and investment adviser's existing fiduciary obligation under section 206 to disclose material facts about any precarious financial condition and certain disciplinary events to clients, the proposal should not impose any new obligations or costs on investment advisers. Moreover, by providing advisers with guidance and certainty in fulfilling these disclosure obligations, the proposed rule could decrease somewhat the cost of compliance with the Advisers Act. By alerting advisers to this disclosure obligations, the proposed rule also should result in more advisory clients receiving material facts about these conditions and events. The Commission's regulatory and enforcement costs also could decrease because codifying the standard should increase compliance. The Commission requests specific comment on its assessment of the costs and benefits associated with the proposal, including any specific estimates of any costs and benefits perceived by commenters.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Rule 206(4)–4 proposed herein. The Analysis notes that proposed Rule 206(4)–4 would codify the Commission's position that section 206 of the Advisers Act requires an adviser to disclose material facts about any precarious financial condition and certain disciplinary events to clients. The objective of the proposed rule is to help ensure that clients are provided with material facts about these conditions or events that are important to making an informed decision whether to hire or retain a particular adviser. The Analysis indicates that while the rule's impact on small entities cannot be quantified, the proposal should not impose any additional costs on advisers. Rather, by providing greater certainty about disclosure requirements, the rule could decrease the cost of compliance for advisers. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Debra Kertzman, Attorney, Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Paperwork Reduction Act

The information collection required by proposed Rule 206(4)–4 has been submitted to the Office of Management and Budget.

Statutory Authority

The Commission is proposing Rule 206(4)–4 under the authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)].

List of Subjects in 17 CFR Part 275

Investment advisers, Fraud, Securities.

Text of Proposed Rule

It is proposed that Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citiation for Part 275 continues to read as follows:

Authority: Sec. 203, 54 Stat. 850, as amended 15 U.S.C. 80b–3; Sec. 204, 54 Stat. 852, as amended, 15 U.S.C. 80b–4; Sec. 206A, 84 Stat. 1433, as added, 15 U.S.C. 80b–6A; Sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b–11.

2. By adding § 275.206(4)–4 as follows:

§ 275.206(4)–4 Financial and disciplinary information that investment advisers must disclose to clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

(1) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients; or

(2) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(b) Legal or disciplinary events that are material to an evaluation of an adviser's integrity or ability to meet contractual commitment to clients within the meaning of paragraph (a)(2) of this section are hereby defined to include any of the following events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated, unless more than 10 years have elapsed from the time of the event:

(1) A criminal or civil action in a court of competent jurisdiction in which the person—

(i) Was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding, involving an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, acting as or being associated with a broker-dealer, investment company, investment adviser, futures commission merchant, commodity trading adviser, commodity pool operator, bank, savings and loan association, or fiduciary; or otherwise engaging in any investment-related activity.

(2) Administrative proceedings before the Securities and Exchange Commission, any other federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as "agency") in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act as, or barring or suspending the person's association with, a broker-dealer, investment company, investment adviser, futures commission merchant, commodity trading adviser, commodity pool operator, bank, savings and loan association, or fiduciary; or otherwise significantly limiting the person's activities.

(3) SRO proceedings in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than $2,500; or otherwise

prescribe fraudulent and deceptive practices, indicates that Congress did not intend for such rules and regulations to substitute for the general antifraud provisions under section 206. S. Rep. No. 1760, *supra* note 7, at 3509; *Capital Gains, supra* note 3, at 199.

significantly limiting the person's activities.

(c) The information required to be disclosed by paragraphs (a) and (b) of this section shall be disclosed to clients, promptly; and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(d) For purposes of this rule:

(1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(2) "Found" means determined or ascertained in an adverse final SRO proceeding, administrative proceeding, or court action, including a consent decree.

(3) "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures commission merchant, commodity trading adviser, commodity pool operator, bank, savings and loan association, or fiduciary).

(4) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing to reasonably supervise another's act.

(5) "SRO" means any national securities or commodities exchange or registered association, or registered clearing agency.

(e) For purposes of calculating the ten-year period referred to in paragraph (b) of this section, the date of a reportable event shall be deemed the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed. The ten-year period is only a minimum disclosure requirement and, depending on the facts and circumstances, events occurring outside this period may still be material and required to be disclosed under paragraph (a) of the rule.

(f) Compliance with paragraph (b) of this rule shall not relieve any investment adviser from the disclosure obligation of paragraph (a) of the rule or any other disclosure obligation under the Act, the rules and regulations thereunder, or under any other federal or state law.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

September 19, 1986.

[FR Doc. 86-21811 Filed 9-25-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 86-33]

Drawbridge Operation Regulations: Cold Spring Brook, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Summerwood Condominium Association, the Coast Guard is considering adding regulations governing the footbridge over Cold Spring Brook, at mile 0.1, Old Saybrook, Connecticut, by requiring advance notice when the span is in place during the summer. This proposal is being made because of the limited requests for opening the draw. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 10, 1986.

ADDRESS: Comments should be mailed to Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668-7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, opposition to, or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ciro Compagno, project manager, and Mary Ann Arisman, project attorney.

Discussion of Proposed Regulations

On February 7, 1984, the Coast Guard permitted the construction of a movable in lieu of a fixed bridge over Cold Spring Brook to provide for the navigational needs of upsteam property owners and emergency access to the waterway. On June 7, 1985, at the request of the bridge owner, the Coast Guard approved temporary regulations for a 60-day period to test the operation of a telephone system for requesting bridge openings. During the 1985 boasting season, only one bridge opening was recorded. Additionally, no comments or objections were received in response to Public Notice 3-596 implementing the temporary regulations. During the summer months, this proposal would allow a bridge opening within 15 minutes of a mariner's request by a telephone monitored and maintained by the bridge owner. The bridge owner would also provide a means for mariners to secure their boats upstream and downstream of the bridge while using this telephone.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. There are no commercial water-dependent facilities or entities that will be adversely affected by this action. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117

of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.202 is added to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.202 Cold Spring Brook.

The draw of the footbridge, mile 0.1 at Saybrook, shall open within 15 minutes of a mariner's request by telephone. To enable mariners to request bridge openings, the owner shall maintain and monitor a telephone at the bridge and provide a means for mariners to secure their boats upstream and downstream of the bridge in order to use this telephone.

Dated: September 10, 1986.

J.C. Uilthol,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 86–21767 Filed 9–25–86; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 51, No. 187
Friday, September 26, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 2 p.m., Wednesday, October 1, 1986, at Leighton and Regnery, 1667 K Street, NW., Suite 801, Washington, DC. The committee will meet to reconsider a recommendation on the OSHA–OSHRC enforcement model. The committee will also consider the status of pending committee projects. For further information, call Richard K. Berg, 202–254–7065.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting. Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
September 24, 1986.
[FR Doc. 86–21998 Filed 9–25–86; 8:45 am]
BILLING CODE 6110–01–M

Committee on Governmental Processes; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 9:30 a.m. on Thursday, October 2, 1986 at the office of Covington and Burling, 1201 Pennsylvania Avenue, NW. (11th floor), Washington, DC.

The Committee will meet to discuss the Administrative Conference's project on use by federal agencies of private attorneys. This subject has been studied for the Conference by Mark L. Alderman and David E. Landau, Esqs., of the firm of Wolf, Block, Schorr and Solis-Cohen of Philadelphia, Pennsylvania, and by Professor Ronald D. Rotunda of the University of Illinois College of Law.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference by Wednesday, October 1. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC (Telephone: 202–254–7065). Minutes of the meetings will be available on request.

Richard K. Berg,
General Counsel.
September 24, 1986.
[FR Doc. 86–21997 Filed 9–25–86; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 12, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collecion of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Cooperative Service
  Marketing and Transportation of Grain by Local Cooperatives
  Every three years
  Businesses or other for-profit; 320 responses; 106 hours; not applicable under 3405(h)
  Charles L. Hunley (202) 382–1770
- Agriculture Marketing Service
  California Olives (M.O. 932)
  Committee forms only
  Recordkeeping; On occasion; Weekly; Monthly; Annually
  Farms; Businesses or other for-profit; 23,109 responses; 6,684 hours; not applicable under 3504(h)
  Ronald L. Cioffi (202) 447–5698
- Agricultural Marketing Service
  Celery Grown in Florida (M.O. 967)
  Committee forms only
  Recordkeeping; On occasion; Annually
  Farms; Businesses or other for-profit; 2,399 responses; 161 hours; not applicable under 3504(h)
  Ronald L. Cioffi (202) 447–5698
- Animal and Plant Health Inspection Service
  Animal Welfare
  VS Forms 18–3, 18–5, 18–9, 18–11, 18–19, 18–23

Recordkeeping, On occasion, Annually
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 6,313 responses; 19,445 hours; not applicable under 3504(h)
Dr. Morley H. Cook (301) 436-5256

New

- Agricultural Marketing Service
Meat Market News
Daily
Businesses or other for-profit; 172,640 responses; 2,877 hours; not applicable under 3504(h)
James A. Ray (202) 447-6231

Reinstatement

- Rural Electrification Administration
REA 341, 345, 346
On occasion
Small businesses or organizations; 400 responses; 450 hours; not applicable under 3504(h)
George A. Shultz (202) 382-1920

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 86-21800 Filed 9-25-86; 8:45 am]

BILLING CODE 3410-01-M

Packers and Stockyards Administration

Certification of Statewide Central Filing System of Idaho

The Statewide central filing system of Idaho is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for farm products produced in that State as follows:

Wheat
Barley
Rye (including triticale)
Oats
Sorghum grain
Flaxseed
Safflower
Rape
Field corn
Hay
Ensilage
Potatoes
Sugar beets
Dry beans
Dry peas
Lentils
Sweet corn
Onions
Mint
Hops
Popcorn
Sunflower seeds
Soybeans
Rice
Grass for seed
Alfalfa for seed
Other hay legumes for seed
Garden vegetable & flower seeds
Green peas
Tomatoes
Lettuce
Cucumbers
Broccoli
Cauliflower
Lima beans
Green beans
Melons
Grapes
Apples
Apricots
Cherries
Nectarines
Peaches
Pears
Plums
Strawberries
Raspberries
Sod
Nursery stock (trees & shrubs)
Christmas trees
Flowers and potted plants
Mushrooms
Beef cattle and calves
Beefalo
Bison
Sheep and lambs
Wool
Goats
Llamas
Hogs
Dairy cattle
Milk
Horses
Mules
Donkeys and burros
Chickens
Eggs
Turkeys
Ducks
Geese
Game birds
Mink & pelts
Rabbits
Bees
Honey
Bees wax
Fish and other aquaculture
Big game animals (deer & elk)
Worms

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2) Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: September 23, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86-21856 Filed 9-25-86; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: 1987 Test Census of North Central North Dakota Unit Status Review.
Form number: Agency—DF-160; OMB-NA.
Type of request: New collection.
Burden: 3,300 respondents; 55 reporting hours.
Needs and uses: This test census will be used to verify that housing units enumerated as vacant or deleted during previous census operations were correctly classified. Results will be evaluated in planning the 1990 population.
Affected public: Individuals or households.
Frequency: One time.
Respondent's obligation: Mandatory.
OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.
Title: 1987 Test Census of North Central North Dakota—Conventional Enumeration—Listing Operations.
Form number: Agency—DF-13, DF-104, DF-104A, DF-104B, Df-104C, DF-169; OMB—NA.
Type of request: New collection.
Burden: 22,148 respondents; 1,107 reporting hours.
Needs and uses: This test Census will be used to enumerate rural and sparsely populated areas.
Affected public: Indivduals or households.
Frequency: One time.
Respondent's obligation: Mandatory.
OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.
Title: 1987 Test Census—Group Quarters Enumeration.
Form number: Agency—DF116, DF-116A, DF-352; OMB-NA.
Type of request: New collection.
Burden: 37 respondents; 28 reporting hours.

Needs and uses: This specialized survey will collect census data for occupants of group quarters who would be otherwise missed during general population census.

Affected public: Individuals or households.

Frequency: One time.

Respondent's obligation: Mandatory.

OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: Current Industrial Reports Program (Wave II Mandatory).

Form number: Agency—M20J, M20L, etc; OMB—0607-0395.

Burden: 25,921 respondents; 36,005 reporting hours.

Needs and uses: The collected data will be used by Government agencies to analyze specific commodities and industries.

Affected public: Businesses or other for-profit institutions.

Frequency: Monthly, quarterly, annually.

Respondent's obligation: Mandatory.

OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: Current Industrial Reports Program (Wave II Voluntary).

Form number: Agency—M20A, M20R, etc.; OMB—0607-0206.

Type of request: Revision of a currently approved collection.

Burden: 3,572 respondents; 13,806 reporting hours.

Needs and uses: The collected data will be used by Government agencies to analyze specific commodities and industries.

Affected public: Businesses or other for-profit institutions.

Frequency: Monthly, quarterly, annually.

Respondent's obligation: Voluntary.

OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: 1987 Economic Censuses Classification Report.

Form number: Agency—NC-9921; OMB—NA.

Type of request: New collection.

Burden: 200,000 respondents; 93,750 reporting hours.

Needs and uses: This survey will be conducted in FY88 and will collect information that will provide a standard basis for assigning Standard Industrial Classification codes of establishments engaged in all areas of economic activity.

Affected public: Businesses or other for-profit institutions.

Frequency: Quinquennially.

Respondent's obligation: Mandatory.

OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: March 12 Employment from IRS Form 941E.

Form number: Agency—IRS 941E; OMB—0607-0203.

Type of request: Extension of a currently approved collection.

Burden: 100,000 respondents; 10,000 reporting hours.

Needs and uses: The collected data will be used to update the Standard Statistical Establishment List (SSEL). The SSEL, as a universal sampling frame of U.S. business activity, requires employment data from all sectors of the economy.

Affected public: State or local governments, business of other for-profit institutions.

Frequency: Annually.

Respondent's obligation: Mandatory.

OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: Annual Retail Trade Report.

Form number: Agency—B-151, B-151A, etc; OMB—0607-0013.

Type of request: Revision of a currently approved collection.

Burden: 21,490 respondents; 8,988 reporting hours.

Needs and uses: This survey provides the only continuing authoritative measure of annual sales, purchases, year-end inventories, and accounts receivable balances. The sales and inventories are used as benchmarks for the monthly series. These data along with purchases, are also used by the Bureau of Economic Analysis to complete the GNP. The Federal Reserve Board uses the accounts receivable balances.

Affected public: Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's obligation: Mandatory.

OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: Construction Improvements and Maintenance and Repair Supplement.

Form number: Agency—EIA-871G; OMB—NA.

Type of request: New collection.

Burden: 1,528 respondents; 255 reporting hours.

Needs and uses: Responses to this supplement will provide the Census Bureau with annual (1986) estimates of expenditures for maintenance and repairs and construction improvements to nonresidential buildings as reported by the owners and tenants of the buildings.

Affected public: State or local governments, businesses or other for-profit institutions, federal agencies or employees, small businesses or organizations.

Frequency: Triennially.

Respondent's obligation: Voluntary.

OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: Service Annual Survey.

Form number: Agency——B-500, B-500-T; OMB—0607-0422.

Type of request: Revision of a currently approved collection.

Burden: 20,700 respondents; 4,200 reporting hours.

Needs and uses: These data will be used by the Federal Government for computation of the national accounts for economic policy decisions, and by private industry for marketing analysis. Coverage was expanded in response to Congressional and private initiatives.

Affected public: Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's obligation: Mandatory.

OMB desk officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 22, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division.

[FR Doc. 86-21857 Filed 9-25-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments, UCLA, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S.

Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 86-107R. *Applicant:* UCLA, 405 Hilgard Avenue, Los Angeles, CA 90024. *Instrument:* pH Electrodes, Model Lot 440-M4/20/3m-15.30., *Manufacturer:* InGold AG Industrie Nord, Switzerland. Original notice of this resubmitted application was published in the **Federal Register** of February 20, 1986.

Docket Number: 86-163R. *Applicant:* University of California, Los Alamos National Laboratory, SM-30, Bikini Road, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* ICP Mass Spectrometer, Model VG PlasmaQuad. *Manufacturer:* VG Instruments, Inc., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 28, 1986.

Docket Number: 86-308. *Applicant:* University of Cincinnati, Department of Chemistry, Cinicinnati, OH 45221-0172. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for the study of the fundamental nature and analytical application of argon and helium plasmas as ion sources. Typical experiments will involve high pressure liquid chromatography and gas chromatography sample introduction of both metal and nonmetals. In addition, the instrument will be used to support the Chemistry 971 research for graduate studies. In other courses the instrument will be used to provide advanced training in state-of-the-art instrumentation and to provide training to achieve viable doctoral candidates. *Application Received by Commissioner of Customs:* September 8, 1986.

Docket Number: 86-309. *Applicant:* University of Notre Dame, Chemistry Department, Notre Dame, IN 46556. *Instrument:* GC/Mass Spectrometer Data System, Model 823OC. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* The instrument is intended to be used to conduct ongoing and proposed research in the areas of biochemistry and synthetic organic, organometallic and inorganic chemistry. This research will include:

(1) Synthesis and characterization of unusual cluster compounds.

(2) Synthesis and study of microbial iron chelators and B-lactam antibiotics.

(3) Synthetic organic and organotransition metal chemistry.

(4) Organometallic chemistry of metal-metal bonded species.

(5) Biosynthesis and structure determination of cell surface glycospinogolipids.

Application Received by Commissioner of Customs: September 8, 1986.

Docket Number: 86-311. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* Mass Spectrometer System, Model SIMSLAB MKII. *Manufacturer:* VG Instruments Inc., United Kingdom. *Intended Use:* The instrument will be used for investigation of a variety of phenomena of interest to scientists in the Materials Science and Technology Division. These phenomena include:

(1) Oxide growth mechanism in FeCr and FeCrY alloys,

(2) Y distribution in oxide scales on FeCrY alloys,

(3) Anion diffusion studies in CoO,

(4) Grain boundary diffusion studies in oxides,

(5) Radiation induced segregation studies in metals and metal grain boundaries,

(6) Boron and other impurity distributions in fuel cell materials,

(7) S distribution in oxide films formed in bioxidant environments and

(8) Elemental distributions in NbN superconductors.

Application Received by Commissioner of Customs: September 10, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-21860 Filed 9-25-86; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Veterans Administration Medical Center, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number 86-250. Applicant: Veterans Administration Medical Center, San Francisco, CA 94121. Instrument: Electron Microscope, Model EM 10 CA. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 51 FR 26287. Instrument ordered: May 29, 1986.

Docket number 86-252. Applicant: Medical College of Wisconsin, Milwaukee, WI 53226. Instrument: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 51 FR 26732. Instrument ordered: March 10, 1986.

Docket number 86-254. Applicant: Baylor College of Medicine, Houston, TX 77030. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 51 FR 26287. Instrument ordered: May 19, 1986.

Docket number 86-256. Applicant: University of Irvine, Irvine, CA 92717. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 51 FR 26288. Instrument ordered: April 18, 1986.

Docket number 86-258. Applicant: Duke University Medical Center, Durham, NC 27710. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 51 FR 26288. Instrument ordered: May 30, 1986.

Docket number 86-262. Applicant: University of Alabama at Birmingham, Birmingham, AL 35294. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 51 FR 26732. Instrument ordered: May 9, 1986.

Docket number 86-271. Applicant: Northwestern University, Evanston, IL 60201. Instrument: Electron Microscope, Model H-9000. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 51 FR 28402. Instrument ordered: October 22, 1985.

Docket number 86-272. Applicant: Northwestern University, Evanston, IL 60201. Instrument: Electron Microscope, Model H-9000. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 51 FR 28858. Instrument ordered: January 8, 1986.

Docket number 86-273. Applicant: University of California at Santa Barbara, Santa Barbara, CA 93106. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 51 FR 28859. Instrument ordered: May 14, 1986.

Docket number 86-274. Applicant: Worcester Foundation for Experimental Biology, Shrewsbury, MA 01545.Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: Philips. Instruments Inc., The Netherlands. Intended use: See notice at 51 FR 28859. Instrument ordered: June 5, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-21858 Filed 9-25-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Lawrence Livermore National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials, Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 86-270. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: CO_2 Laser Amplifier, Model TEA-622 with Accessories. Manufacturer: Lumonics Inc., Canada. Intended use: See notice at 51 FR 28402.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (May 7, 1986).

Reasons: The foreign article provides the largest possible aperture (20 cm), a pulse energy of 50 joules in a 50 nanosecond (full width half maximum) pulse. This capability is pertient to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no bid responses to a formal request for quotation sent to several domestic manufacturers it is apparent that no domestic manufacturers was both able and willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-21859 Filed 9-25-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a joint public meeting, September 29-30, 1986, of its Red Drum Advisory Panel, its Scientific and Statistical and its Special Red Drum Committees, to review the Secretarial Red Drum Fishery Management Plan. The public meeting will convene at the Landmark Motor Hotel Inn, 2601 Severn Avenue, Metairie, LA. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL, (813) 228-2815.

Dated: September 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-21839 Filed 9-25-86; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a joint public meeting, October 27-31, 1986, in St. Simons Island, GA, to discuss the Coastal Migratory Pelagics; Swordfish; Spiny Lobster; Shrimp, and Calico Scallop Fishery Management Plans, as well as to discuss financial, personnel, and other fishery management matters. A detailed agenda will be available on or about October 17, 1986. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: September 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Servcie.

[FR Doc. 86-21840 Filed 9-25-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the ADA Board [1]

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Ada Board has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The board will provide the Under Secretary of Defense, Research and Engineering, with a balanced source of advice and information regarding the technical and policy aspects of the Ada program. This input is essential to achieving the establishment and utilization of a common computer

[1] Ada is a registered trademark of the U.S. Government—Ada Joint Program Office.

language. The board will serve the public interest by providing a source of expert advice in accordance with the Defense Standardization Program and the American National Standards Institute (ANSI) procedures.

Lenda M. Lawson,

Alternate OSD Federal Registration Officer, Department of Defense.

September 23, 1986.

[FR Doc. 86-21849 Filed 9-25-86; 8:45 am]

BILLING CODE 3810-01-M

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Board

September 19, 1986.

AGENCY: Defense Contract Audit Agency.

ACTION: Notice of membership of the Defense Contract Audit Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Contract Audit Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Kriesch, Personnel Management Specialist, Office of the Director of Personnel and Security, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, VA, 202/274-5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Board. They will serve a one-year term, effective upon publication of this notice.

Mr. Bobby Oakley, Director, Contract Audit Management, Office of the Assistant Secretary (Comptroller), Office of the Secretary of Defense

Mr. John Quill, General Counsel, Defense Legal Services

Mr. Peter H. Tovar, Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency

Linda M. Lawson,

Alternate Office of Secretary of Defense Federal Liaison Officer, Department of Defense.

[FR Doc. 86-21612 Filed 9-25-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

National Petroleum Council Committee on U.S. Oil and Gas Outlook; Notice of Previous Meeting

Through an oversight, advanced notice of the following meetings did not appear in the **Federal Register**: the Committee on U.S. Oil and Gas Outlook and the Coordinating Subcommittee on Oil and Gas Outlook held on Tuesday, September 23, 1986, in Houston, Texas. When this oversight was discovered, action was immediately taken to notify the Houston newspapers and media. We regret any inconvenience this may have caused.

Transcripts of these meetings will be available for public review October 7, 1986, at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 22, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-21788 Filed 9-25-86; 8:45 am]

BILLING CODE 6450-01-M

Richland Operations Office; Solicitation for Cooperative Agreement Proposal; Revision

AGENCY: U.S. Department of Energy, Richland Operations Office.

ACTION: Solicitation for Cooperative Agreement Proposal, revision.

SUMMARY: DOE-RL is revising its notice which appeared in the **Federal Register** on July 24, 1986, (51 FR26573) as follows:

1. On page 26573, third column, lines 9, 18, 21 and 28, change "biomass" to "biofuels". Biofuels include agricultural waste and municipal solid waste.

2. On page 26573, third column, line 43, change "award" to "award(s)".

Dated: August 6, 1986

Robert D. Larson,

Director, Procurement Division.

[FR Doc. 86-21789 Filed 9-25-86; 8:45 am]

BILLING CODE 6540-01-M

Richland Operations Office; Solicitation for Cooperative Agreement Proposal; Agreement

AGENCY: U.S. Department of Energy, Richland Operations Office.

ACTION: Solicitation for Cooperative Agreement Proposal, amendment.

SUMMARY: DOE-RL is amending its notice which appeared in the **Federal Register** on July 24, 1986 (51 FR26573) as follows:

1. On page 26573, third column, line 45, change September 15, 1986, to October 14, 1986.

Dated: September 4, 1986.

Robert D. Larson,

Director, Procurement Division.

[FR Doc. 86-21790 Filed 9-25-86; 8:45 am]

BILLING CODE 6540-01-M

Office of Energy Research

University Research Instrumentation Program

AGENCY: Department of Energy.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) program solicitation, to discuss the eligibility requirements for this program, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328-26331), (2) October 18, 1983, DOE changes to the program (48 FR 48277-48281); and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774-55775).

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: Mr. Walker K. Love, Procurement and Contracts Division, Oak Ridge Operations Office, Department of Energy, Oak Ridge, TN 37831, Telephone Number: (615) 576-0791.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the University Research Instrumentation program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific

energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. Although no final congressional action for Fiscal Year 1987 has yet been approved for this program, the Presidential budget request to Congress for this program for FY 1987 is $5.0 million. In anticipation of Congressional support for the program, DOE invites all qualified universities to write for a copy of its University Research Instrumentation program solicitation, DOE–ER–0184/2, Notice of Program Announcenent Number DE–PS05–86ER75310. Selection for award under this solicitation is subject to the availability of funds.

Principal Research Areas

While all areas of energy research are eligible, in FY 1987 the URI program's funds will be concerned primarily with capital equipment (costing $100,000 or more) needed for on-campus research in one of four specific energy areas (listed below in alphabetical order). In order to indicate the potential breadth of the research in each area, a number of examples of related research topics are given. Within each topic area no preference is given to any of the examples.

1. Ceramic, Electronic, Polymeric, and Metallurgical Materials—

a. Synthesis and Processing of Materials: (1) Ceramics processing; (2) melting and casting; (3) all forms of thin film materials preparation; (4) coatings; metallurgical processing; (5) gas phase synthesis; (6) doping and implant modifications; and (7) other related research.

b. Characterization of Materials: (1) Particle and X-ray microscopy, scattering and diffraction studies of structure and composition, and defects in materials; (2) acoustic and magnetic studies of structure, defects, and residual stresses in materials; (3) studies of surfaces and interfaces in materials; and (4) other related research.

c. Properties of Materials: (1) Mechanical properties; (2) electronic and magnetic properties; (3) corrosion behavior; (4) phase transformations; (5) embrittlement; (6) transport properties; (7) erosion; and (8) other related research.

2. Combustion—

a. Chemical Dynamics and Kinetics: (1) Characterization and kinetics of reactive combustion intermediates; (2) molecular dynamics of high temperature combustion sequences, especially key properties of highly reactive and short-lived species; (3) chemistry of atomic and molecular fragments arising from pyrolysis of fuels.

b. Thermal Engineering: (1) Characterization of fluid motion on the combustion process and the stability of flames; (2) characterization of two-phase flow in combustion, e.g., void fraction, stratification, etc.; (3) application of the theory of dynamical systems to mixing and stirring; (4) interface phenomena; (5) dynamics of fluidized bed combustion.

3. Geochemistry and Geophysics—

a. Geochemical migration;

b. Thermochemical properties of geologic materials;

c. Rock-water interactions;

d. Properties of earth materials;

e. Advanced methods in seismology relative to energy resources;

f. Aspects of plate tectonics relative to energy resources;

g. Rock flow and fracture.

4. Health and Environmental Effects of Energy Development and Applications of Energy Developments and Use—

a. Research to better characterize and measure radiation and energy-related chemicals;

b. Determine their transport and transformation in the atmosphere and in aquatic and terrestrial systems;

c. Elucidate the mechanisms controlling the function and response of ecosystems to radiation or chemicals;

d. Define their potential effects and mechanisms of action on human health via direct observations and through animal, cellular and molecular systems, including biomolecular structure and function, gene function and control, genetic damage and repair and cell transformation;

e. Develop measurement and control systems for research on the biological effects of carbon dioxide; and

f. Determine the effects of changing carbon dioxide and climate variables on field and forest systems.

While the equipment requested will be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility in advancing other areas of scientific or technical research is of peripheral interest during the application's review procedure.

Eligibility and Limitations

Participation in the URI program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific area for which the equipment is requested during the past two fiscal years (October 1, 1984, to September 30, 1986).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expand the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of Energy Research believes that restricting eligibility to institutions which have performed $150,000 of DOE supported research over a two-year period will limit eligibility in this grant program to those institutions which, because of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCU's) which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area.

DOE will consider only requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated area. Smaller research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the instrument(s) requested (or for use with existing research instrument(s)) in the selected area may be considered.

Application Forms

Program solicitations are expected to be ready for mailing by October 1, 1986. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies may be obtained by writing to: Division of University and Industry Programs, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 252–8910.

Closing Date for Transmittal of Apolications

To be eligible, applications must be received by the Oak Ridge Operations Office by 4:30 p.m., December 1, 1986.

Authority for the University Research Instrumentation Program is contained in section 31 (a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and

section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

(Catalog of Federal Domestic Assistance No. 81.077, University Research Instrumentation Program)

Issued in Washington, DC, on September 19, 1986.

Alvin W. Trivelpiece,

Director, Office of Energy Research.

[FR Doc. 86-21791 Filed 9-25-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA87-1-47-000, 001]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

September 22, 1986.

Take notice that on September 16, 1986, MIGC, Inc. tendered for filing copies of Thirty-Ninth Revised Sheet No. 32 and Alternate Thirty-Ninth Revised Sheet No. 32 [1] and Tenth Revised Sheet No. 32-A to its FERC Gas Tariff Original Volume No. 1, as required by the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Thirty-Ninth Revised Sheet No. 32 and Alternate Thirty-Ninth Revised Sheet No. 32 and Tenth Revised Sheet No. 32-A provide for a Purchased Gas Adjustment rate decrease of 11.51¢ per MMBtu effective November 1, 1986 in order (1) to provide for a current gas cost adjustment to permit MIGC to reflect the lower cost of gas purchases which it is currently incurring (Table II); (2) to provide for an adjustment to MIGC's Unrecovered Purchased Gas Cost Account as of July 31, 1985 and July 31, 1986 (Table III); (3) to recover carrying charges as permitted under FERC Order No. 47 (Table IV) as set forth in MIGC's First Revised Sheet No. 31-A, and (4) to set forth projected incremental pricing surcharges to become effective November 1, 1986 (Tenth Revised Sheet No. 32-A).[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before 9-29-86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Cpoies of this filing are on file with the Commission and are available for the public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21841 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Alternate Thirty-Ninth Revised Sheet No. 32 is being filed to reflect the fact that MIGC on September 12, 1986 filed Thirty-Eighth Revised Sheet No. 32 which is yet to be accepted by the Commission.

[2] None of MIGC's sale-for-resale customers has reported a MSAC for any prior month determined in the manner prescribed by § 282.504(d)(2) of the Commission's Regulations.

[Docket No. RP86-116-002]

Panhandle Eastern Pipe Line Co.; Change in Tariff

September 23, 1986.

Take notice that on September 15, 1986, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-F
First Substitute Original Sheet No. 32-Y
First Substitute Original Sheet No. 32-Z
Original Sheet No. 32-AA
Original Sheet No. 32-AB
Original Sheet No. 32-AC
Original Sheet No. 32-AD
Original Sheet No. 32-AE
Original Sheet No. 32-AF
Original Sheet No. 32-AG
Original Sheet No. 32-AH
Original Sheet No. 32-AI
Original Sheet No. 32-AJ
Original Sheet No. 32-AK

Panhandle states that the purpose of this compliance filing is to revise as of the initial effective date its PT Rate Schedule for provisional transportation service, which rate schedule became effective on July 1, 1986, subject to refund and certain conditions, pursuant to Commission Order issued June 27, 1986 in this docket. According to Panhandle, the tendered tariff sheets reflect the further applicability of this PT Rate Schedule to the continuation or institution of self-implementing transportation service begun after the issuance of Order No. 436, as a result of the Commission's recent grant to Panhandle of waiver, through at least December 30, 1986, of the contract demand reduction and conversion requirements under § 284.10 of the regulations; provision for firm transportation service if uncommitted capacity should become available; and operating terms and conditions applicable to PT service.

Panhandle requests that the Commission grant such waivers, as may be necessary, so that the tendered tariff sheets may be accepted for filing and made effective as of July 1, 1986. Panhandle has served copies of this filing on all affected customers, jurisdictional sales customers, applicable state regulatory agencies and intervenors in the subject proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 30, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21846 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

Requests for Waiver

In the matter of Seminole Electric Cooperative, Inc.; Central Florida Electric Cooperative, Inc.; Glades Electric Cooperative, Inc.; Lee County Electric Cooperative, Inc.; Okefenoke Rural Electric Membership Corporation; Peace River Electric Cooperative, Inc.; Sumter Electric Cooperative, Inc.; Suwanee Valley Electric Cooperative, Inc.; Talquin Electric Cooperative, Inc.; and Tri-County Electric Cooperative, Inc. and Clay Electric Cooperative, Inc. and Withlacoochee River Electric Cooperative, Inc.; Docket No. IR-000-484; Docket No. IR-000-320; Docket No. IR-000-877.

September 23, 1986.

Notice is hereby given that the twelve nonregulated utilities identified above have filed pursuant to § 292.403 of the Commission's regulations for waiver of certain requirements established by the Commission under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).These entities seek a waiver of the requirement that they implement the provisions of § 292.303(a) of the Commission's regulations (18 CFR Part 292, Subpart C).

Each of the nonregulated electric utilities has provided public notice in its service area of its intent to request this waiver and has requested comments from any interested person. Each utility (except Seminole Electric Cooperative,

Inc.) has requested a waiver from § 292.303(a) of the Commission's regulations under 18 CFR Part 292, Subpart C which would require these utilities to purchase any power made available from any qualifying facility either directly or indirectly. Each utility has arranged for the Seminole Electric Cooperativ, Inc., their jointly-owned agent and instrumentality and all-requirements wholesale supplier, to make purchases from qualifying facilities on their behalf. The Seminole Electric Cooperative, Inc., has duly implemented the Commission's PURPA regulations, having filed its implementation plan (IR-000-484) on March 25, 1981. Given this arrangement, the applicants believe that direct purchases are not necessary to encourage cogeneration and small power production and are not otherwise required by section 210 of PURPA.

Any person desiring to be heard or to protest any of the above filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed within thirty (30) days of publication of notice in the **Federal Register**, and should reference the applicable docket number or numbers. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21842 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-101-001]

Superior Offshore Pipeline Co.; Compliance Filing

September 22, 1986.

Take notice that on September 10, 1986, Superior Offshore Pipeline Company (SOPCO) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Original Sheet Nos. 5, 7, 8, 10, 17, ,18, 32, 34, 35, 38, 39, 47, 48, 53 and 54

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until September 17, 1986.

Pursuant to the Commission's order issued June 17, 1986 in Docket No. RP86-101-000, a technical conference was set up to determine whether SOPCO's one cent (1¢) transportation rate is cost-based. After a series of conferences with Commission staff and SOPCO suppling cost of service studies and other related information. SOPCO has been advised that its 1¢ transportation rate is cost-based. Therefore, SOPCO requests the Commission to approve the tariffs as revised, to be effective July 1, 1986, and issue an order finding that the one cent (1¢) transportation rate is cost-based and conforms to the requirements of § 284.7 of the Commission regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 86-21844 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-147-002]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Compliance Filing

September 22, 1986.

Take notice that on September 15, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing Substitute First Revised Sheet No. 98 to its FERC Gas Tariff, First Revised Volume No. 1.

Tennessee states that Substitute First Revised Sheet No. 98 is filed to comply with Ordering Paragraph (A) of the Commission's August 29, 1986 order in Docket No. RP86-147-000. Tennessee requests an effective date of September 1, 1986 for the sheet.

Copies of this filing have been mailed to all of Tennessee's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21845 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES86-62-000, et al.]

Texas-New Mexico Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 23, 1986.

Take notice that the following filings have been made with the Commission:

1. Texas-New Mexico Power Company

[Docket No. ES86-62-000]

Take notice that on September 2, 1986, Texas-New Mexico Power Company (Applicant) filed an application with the Commission seeking authorization pursuant to section 204 of the Federal Power Act for authorization to issue not more than $80 million of First Mortgage Bonds.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Public Service Authority

[Docket No. ES86-59-000]

Take notice that on September 2, 1986, the South Carolina Public Service Authority (Authority) filed an application seeking an order authorizing the continuance of a $50,000,000 Tax-Exempt Commercial Paper Program over a two-year period. The Authority asks, in the alternative, an order dismissing the application for lack of jurisdiction.

The Authority proposes to continue to issue Tax-Exempt Commercial Paper through a commercial paper dealer.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. MDU Resources Group, Inc.

[Docket No. ES86-61-000]

Take notice that on September 6, 1986, MDU Resources Group, Inc. (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act (Act), seeking an Order to incur up to $50,000,000 of short-term debt to be issued on or before December 31, 1988, with a final maturity date no later than December 31, 1989.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. The Union Light, Heat and Power Company

[Docket No. ES86-60-000]

Take notice that on September 15, 1986, The Union Light, Heat and Power Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of not more than $19,000,000 of unsecured promissory notes and commercial paper on or before December 31, 1988, with a final maturity date no later than December 31, 1988.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21843 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-115-001]

Trunkline Gas Co.; Change in Tariff

September 23, 1986.

Take notice that on September 15, 1986, Trunkline Gas Company (Trunkline) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-A.3
Original Sheet No. 3-A.4
First Substitute Original Sheet No. 9-BJ
First Substitute Original Sheet No. 9-BK
First Substitute Original Sheet No. 9-BL
Original Sheet No. 9-BM
Original Sheet No. 9-BN
Original Sheet No. 9-BO
Original Sheet No. 9-BP
Original Sheet No. 9-BQ
Original Sheet No. 9-BR
Original Sheet No. 9-BS
Original Sheet No. 9-BT
Original Sheet No. 9-BU
Original Sheet No. 9-BV
Original Sheet No. 9-BW
Original Sheet No. 9-BX
Original Sheet No. 9-BY
Original Sheet No. 9-BZ

Trunkline states that the purpose of this compliance filing is to revise as of the initial effective date its PT Rate Schedule for provisional transportation service, which rate schedule became effective on July 1, 1986, subject to refund and certain conditions, pursuant to Commission Order issued June 27, 1986 in this docket. According to Trunkline, the tendered tariff sheets reflect the further applicability of this PT Rate Schedule to the continuation or institution of self-implementing transportation service begun after the issuance of Order No. 436, as a result of the Commission's recent grant to Trunkline of waiver, through at least December 30, 1986, of the contract demand reduction and conversion requirements under § 284.10 of the regulations; provision for firm transportation service if uncommitted capacity should become available; and operating terms and conditions applicable to PT service.

Trunkline requests that the Commission grant such waivers, as may be necessary, so that the tendered tariff sheets may be accepted for filing and made effective as of July 1, 1986. Trunkline has served copies of this filing on all affected customers, jurisdictional sales customers, applicable state regulatory agencies and intervenors in the subject proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 30, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21847 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-709-000, et al.]

El Paso Electric Corp. et al.; Electric Rate and Corporate Regulation Filings

September 22, 1986.

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Co.

[Docket No. ER86-709-000]

Take notice that on September 15, 1986, El Paso Electric Company (EPE) tendered for filing rate schedule revisions applicable to EPE's wholesale service to Imperial Irrigation District (Imperial) and Texas-New Mexico Power Company (TNP). The revisions are the result of EPE's filing of rates and a rate moderation plan for service to Rio Grande Electric Cooperative, Inc. (Rio Grande) in Docket No. ER86-638-000 and EPE's offer in that filing to extend parallel rates and the same plan to Imperial and TNP.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Curtis/Palmer Hydroelectric Co.

[Docket No. ER86-543-000]

Take notice that on September 15, 1986, Curtis/Palmer Hydroelectric Company tendered for filing in this docket a supplement to its original filing consisting of a copy of an order of the New York Public Service Commission of October 12, 1984 approving a settlement agreement relating to avoided cost estimates for Niagara Mohawk Power Corporation.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Co.

[Docket No. ER85-792-001]

Take notice that on September 15, 1986, Idaho Power Company submitted its compliance filing in this docket by filing a copy of its revised Average System Cost Appendix I reports for its Idaho, Oregon and Nevada exchange jurisdictions. The reports reflect revisions to BPA's determination of Idaho Power Company's Average

System Cost rate in accordance with the Commission's order of August 1, 1986.

Idaho Power Company states that it has provided a copy of its filing to BPA.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Co.

[Docket No. ER86-672-000]

Take notice that on September 15, 1986, Iowa Public Service Company (IPSC) tendered for filing an executed Transmission Facilities and Operating Agreement dated October 24, 1984, which provides for the operation of the George Neal Generating Station Unit No. 4 Transmission, and the parties are presently in agreement to construct, own and operate transmission facilities for the above-mentioned Generating Station: Iowa Public Service Company, Interestate Power Company, Northwestern Public Service Company, Corn Belt Power Cooperative, Northwest Iowa Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Light Plant, Laurens Municipal Light and Power Plant, Milford Municipal Utilities, Spencer Municipal Utilities, City of Webster City, and City of Ceder Falls.

Each of the parties owns electric facilities and is engaged in the generation, transmission, distribution and sale of electric power and energy within the geographical areas served by the parties and desire to implement an agreement regarding transmission facilites that they have jointly constructed.

Copies of the filing were served upon all parties to the agreement and the Iowa Utilities Board.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Long Island Lighting Co.

[Docket No. ER86-707-000]

Take notice that on September 15, 1986, Long Island Lighting Company (LILCO) tendered for filing proposed changes in its FERC Rate Schedule 32, pursuant to which LILCO transmits power and energy from the New York Power Authority to Brookhaven National Laboratory in Upton, New York and Grumman Corporation in Bethpage, New York. The proposed changes would increase revenues from such service by $4,440 based on the 12-month period ending May 31, 1986.

The increase in rates is necessasry for LILCO to recover the increase in the cost of service.

Copies of the filing were served upon the New York Power Authority, Brookhaven National Laboratory, the Grumman Corporation and the New York State Public Service Commission.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Long Island Lighting Co.

[Docket No. ER86-708-000]

Take notice that on September 15, 1986, Long Island Lighting Company (LILCO) tendered for filing proposed changes in its FERC Rate Schedule 32, pursuant to which LILCO transmits power and energy from the New York Power Authority to three municipal electric utilities on Long Island: The Villages of Greenport, Rockville Center and Freeport. The changes increase revenues from such service by $15,939.36 based on the 12-month period ending May 31, 1986.

The proposed increase in rates is to recover the increase in the cost of service, Copies of the filing were served upon the New York Power Authority, the Municipal Electric Utilities Association of New York State, the Incorporated Villages of Greenport, Freeport and Rockville Centre and the New York State Public Service Commission.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas and Electric Co.

[Docket No. EC86-28-000]

Take notice that on September 17, 1986, Oklahoma Gas & Electric Company (OG&C) tendered for filing in this docket an application for approval, pursuant to section 203(a) of the Federal Power Act and Part 33 of the Commission's regulations, of the sale of OG&E of approximately four (4) miles of 138 kV transmission line to Western Farmers Electric Cooperative.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Co.

[Docket No. ER86-364-001]

Take notice that on August 29, 1986, Pacific Gas and Electric Company (PG&E) tendered for filing in this docket its response to a letter from the Director, Division of Electric Power Application Review, of the Office of Electric Power Regulation advising PG&E that its earlier filing was deficient. In its filing PG&E provides additional information and responses to the Director's letter. PG&E requests waiver of the Commission's notice requirements to allow the filing to go into effect November 4, 1984. PG&E states that it has served copies of its filing upon the affected customers and upon the California Public Utilities Commission.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Co.

[Docket No. ER86-396-001]

Take notice that on August 29, 1986, Pacific Gas and Electric Company (PG&E) tendered for filing in this docket its response to a letter from the Director, Division of Electric Power Application Review, of the Office of Electric Regulation advising PG&E that its earlier filing was deficient. In its filing PG&E provides additional information and responses to the Director's letter. PG&E requests waiver of the Commission's notice requirements to allow the filing to go into effect August 19, 1985. PG&E states that it has served copies of its filing upon the affected customers and upon the California Public Utilities Commission.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power and Light Co.

[Docket No. ER86-710-000]

Take notice that on September 15, 1986, Puget Sound Power and Light Company (Puget) tendered for filing in this docket its revised Appendix 1 to the Residential Purchase and Sale Agreement, Contract No. DE-MS79-81BP-90604.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Oglethorpe Power Corp.

[Docket No. RE81-56-003]

Take notice that on September 2, 1986, Oglethorpe Power Corporation tendered its compliance filing in Docket Nos. RE81-56-000, 001, and 002 in response to the Commission's order in those dockets of April 21, 1986.

Comment date: October 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21809 Filed 9-25-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

Correction

In FR Doc. 86-21138 beginning on page 33121 in the issue of Thursday, September 13, 1986, make the following correction:

On page 33122, in the third column, in the first complete paragraph, eleventh line, "not" should read "now".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51638; FRL-3072-9]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 86-19717 beginning on page 31170 in the issue of Tuesday, September 2, 1986, make the following corrections:

1. On page 31171, in the third column, under P 86-1557, in the second line, insert "(G)" after "*Chemical.*"

2. On page 31172, in the second column, under P 86-1570, in the first line "Shin-Estu" should read "Shin-Etsu".

BILLING CODE 1505-01-M

[OPTS-59215B; FRL-3086-4]

Certain Chemical Approval of Petition for Modification of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of a petition for modification of a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME 86-32. The modification conditions are described below.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth Moss, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613B, 401 M St. SW., Washington, DC 20460 (202-382-3395).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restriction on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

On May 9, 1986, TME 86-32 became effective. The notice of approval of the TME was published on May 23, 1986 (51 FR 18957). On September 3, 1986, the Company petitioned to modify the TME. Then Company, which has not imported any of the TME substance, requested a 240-day extension of TME 86-32 to allow for time to obtain the substance, and to allow for the erratic scheduling of the company where the substance is to be test marketed. The volume of the TME substance would be unchanged.

EPA hereby approves the petition for modification of TME 86-32. EPA has determined that test marketing of the new chemical substance subject to the TME, under the conditions described in the original notice of approval as modified by this notice of approval of petition for modification of test marketing exemption, will not present any unreasonable risk of injury to health or the environment. All conditions and restrictions described in the original notice of approval and in this notice of approval must be met.

T86-32

Notice of Approval of Test Market Exemption: May 23, 1986 (51 FR 18957).

Risk Assessment: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Modification: The test marketing period now commences on September 15, 1986, for a period of 240 days from the date of commencement.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts signficant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 15, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-21825 Filed 9-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59227A; FRL-3086-2]

Certain Chemical Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-55. The test marketing conditions are described below:

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Hodges, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613, 401 M St. SW., Washington, DC 20460 (202-382-2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-55. EPA has determined that test marketing of the new chemcial substance

described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk or injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–55. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–86–55

Date of Receipt: July 30, 1986.

Notice of Receipt: August 12, 1986 (51 FR 28886).

Applicant: Lyndal Chemical Company.

Chemical: (S) Guar Gum, 2-hydroxypropyl ether glyoxal-cross-linked.

Use: (G) Water gels explosives, fracturing oil wells.

Production Volume: 5,000 kg/yr.

Number of Customers: 7.

Worker Exposure: 10 workers, up to 8 hrs/day, up to 200 day/yr.

Test Marketing Period: 6 months.

Commencing on: September 12, 1986.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 12, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86–21827 Filed 9–25–86; 8:45 am]

BILLING CODE 6560–50–M

[PF–469; FRL–3086–3]

Pesticide Tolerance Petitions on Fenarimol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions by the Elanco Products Company proposing the establishment of tolerances for residues of the fungicide fenarimol, alpha-[2-chlorophenyl]-alpha-[4-chlorophenyl]-5-pyrimidinemethanol in or on certain agricultural and animal feed commodities.

ADDRESSES: By mail, submit comments identified by the document control number [PF–469] and the petition number, at the following address:

Information Services Section (TS–757C), (Attn: Product Manager (PM) 21), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to:

Information Service Section (TS–757C), Environmental Protection Agency, Rm. 236. CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" [CBI]. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Henry M. Jacoby (PM–21), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and phone number: Room 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1900).

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly and Co., 740 S. Alabama St., Indianapolis, IN 46285, has submitted pesticide (PP) and feed additive (FAP) petitions as follows to EPA proposing tolerances and/or regulations for residues of the the fungicide fenarimol in or on certain commodities.

1. *PP 4F3108.* In the **Federal Register** of August 8, 1984 (49 FR 31756), EPA issued a notice which announced that Elanco Products Co. had submitted PP 4F3108 proposing to amend 40 CFR 180.421 by establishing tolerances for the residues of fenarimol in or on certain raw agricultural commodities that included apples at 0.1 part per million (ppm).

Elanco has amended the petition by reducing the tolerance level for apples from 0.1 to 0.01 ppm and adding a tolerance for kidney of livestock at 0.1 ppm.

The proposded analytical method for determining residues is gas chromatography using an electron capture detector.

2. FAR 6H5488. Elanco Products Co. proposes to amend 21 CFR Pare 561 by establishing a regulation to permit residues of fenarimol in or on the animal feed commodities wet and dry apple pomance at 0.2 ppm.

Authority: 21 U.S.C. 346a and 348.

Dated: September 18, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–218226 Filed 9–25–86; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3087–2]

RCRA Ground-Water Monitoring Technical Enforcement Guidance Document; Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of guidance document.

SUMMARY: The Environmental Protection Agency announces the availability of the RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (TEGD). The TEGD is the guidance document intended to assist the Agency and States to evaluate the adequacy of ground-water monitoring systems at facilities regulated under the Resource Conservation and Recovery Act. The document will also prove to be

of benefit to the regulated community by clarifying the objectives of ground-water monitoring programs. EPA is publishing this guidance document to finalize the August, 1985 draft RCRA Ground-Water Monitoring Technical Enforcement Guidance Document.

The TEGD may be obtained through the Government Printing Office.

ADDRESS: Government Printing Office, North Capitol Street, NW, Washington, DC 20401, Telephone: (202) 275-3648.

Requestors should cite the title and date of publication.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at (800) 424-9346. For technical information contact Dr. Kenneth V.B. Jennings, USEPA, Office of Waste Programs Enforcement 401 M St., SW., Washington, DC 20460, telephone (202) 475-9374.

Dated: September 17, 1986.

J. Winston Porter,

Assistant Administrator.

[FR Doc. 86-21820 Filed 9-25-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3086-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 8, 1986 through September 12, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-K65098-CA, Rating LO, Lassen Nat'l Forest, Land and Resource Mgmt. Plan, CA. SUMMARY: Although EPA noted its lack of objections with the draft EIS, it requested that the final EIS discuss several water quality issues in greater detail, and discuss the relationship of a recent Lassen geothermal leasing draft EIS with the forest planning process.

ERP No. D-BLM-L40151-ID, Rating EC2, Egin and Hamer Road Construction, Right-of-Way Application, Medicine Lodge Resource Area, ID. SUMMARY: EPA found that the draft EIS adequately describes the potential impacts of the proposed action and alternatives. A road in Nine Mile Knoll, an Area of Critical Environmental Concern (ACEC) could degrade the qualities for which the ACEC was established and significantly affect winter range for elk, deer, and antelope. The draft EIS does not analyze the effectiveness of the proposed mitigation or the potential for reversing impacts if mitigation fails, and inadequately considers protection of the candidate endangered species along the proposed right-of-way.

ERP No. DS-COE-K36010-GU, Rating LO, Agana River Flood Control Improvements, Guam. SUMMARY: EPA's review of the draft supplemental EIS resulted in a lack of objections to the project. EPA requested that the final supplemental EIS fully evaluate mitigation measures to compensate for loss of wetlands and how the project and alternatives will affect important aquifer recharge areas.

ERP No. D-DOE-A22106-WA, Rating EC2, Hanford Site, Defense High-Level Transuranic and Tank Wastes Disposal, WA. SUMMARY: EPA is concerned that the proposed project may not meet regulatory requirements of several environmental laws. Furthermore, additional data is needed to determine what environmental requirements apply and whether compliance can be achieved. EPA does support several portions of the proposed program, but also believes additional data is needed before making decisions for other proposed actions.

ERP No. DA-FHW-B40026-RI, Rating EC2, Woonsocket Industrial Highway/RI-99 Construction, I-295 Interchange to RI-146/RI-146A with connection to RI-122/Mendon Rd., 404 Permit, RI. SUMMARY: Based on EPA's review, Alignment 3 may be the only alternative which complies with EPA's 404(b)(1) Guidelines. However, EPA will consider additional information that becomes available through the final EIS review process. In addition, EPA believes that the closed drainage system should be designed for the entire length of the roadway within the Crookfall Brook watershed including all new interchanges and on/off ramps. Finally, EPA has offered to meet with FHWA and Rhode Island DOT to discuss wetland mitigation and other project concerns.

ERP No. D-SCS-G36173-OK, Rating EC2, Waterfall-Gilford Creek Watershed Flood Control and Agricultural Drainage, Construction, 404 Permit Possible, OK. SUMMARY: EPA's review has identified environmental impacts that should be avoided or further mitigated in order to fully protect and benefit the environment. The final EIS should include additional water quality impact assessment, mitigation measures and Section 106 National Historic Preservation Act consultation and coordination.

Final EISs

ERP No. F-AFS-K65058-00, Coronado Nat'l Forest, Land and Resource Mgmt. Plan, Wilderness Suitability, AZ and NM. SUMMARY: The final EIS adequately addressed the concerns EPA had raised on the draft EIS. EPA asks that the US Forest Service keep it informed of progress in carrying out the mitigation measures adopted in the Record of Decision.

ERP No. F-BIA-G08010-NM, Ojo 345 kV Transmission Line Extension and Substation Construction, Approval and Right-of-Way Grants, NM. SUMMARY: EPA expressed no objections with the proposed action with proper implementation of the mitigation measures as described.

ERP No. F-NOA-D90011-VA, Commonwealth of Virginia Coastal Resources Mgmt. Program, Approval and Implementation, VA. SUMMARY: EPA reviewed the final EIS and found problems with the adequacy of the response to the draft EIS comments, particularly with respect to the assessment of cumulative impacts in the coastal zone areas. EPA also recommends the closer coordination of the State Council on the Environment with the Federal permit-issuing agencies. Finally, the Agency recommends further evaluation of the technical data from specific studies before the issuance of a formal evaluation of the Coastal Resources Management Program.

ERP No. F-VAD-E81026-FL, Northern Palm Beach County Veterans Administration Medical Center, Construction, FL, SUMMARY: The final EIS adequately addresses EPA's concerns about water management, wetland protection and incinerator permit requirements. With the proper design and environmental controls (which should be committed to in the Record of Decision), either of the VA preferred sites would be acceptable to EPA for location of the facility.

Dated: September 23, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-21869 Filed 9-25-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3086-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed September 15, 1986 Through September 19, 1986 Pursuant to 40 CFR 1506.9

EIS No. 860378, Final, EPA, NY, Oakwood Beach Water Pollution Control Project, Phase III and Future Phases, Construction Grants, Staten Island, Due: October 27, 1986, Contact: Carol Stein (212) 264-5397

EIS No. 860379, Final, AFS, CO, Stevens Gulch Road Extension, Hubbard, Dyke and Elk Creeks Timber Sales, Offering and Forest Management Activities, Due: October 27, 1986, Contact: Raymond Evans (303) 874-7691

EIS No. 860380, Draft, COE, CA, Arco Coal Oil Point, Oil and Gas Development, 10 and 404 Permits, Santa Barbara County, Due: November 10, 1986, Contact: Dick Clark (213) 894-5606

EIS No. 860381, Draft, BLM, CA, San Joaquin Valley Pipeline and Ancillary Facilities Project, Construction, Weir Station to Martinez Oil Refinery, Right-of-Way Grant, Due: November 24, 1986, Contact: John Lien (916) 322-7805

EIS No. 860382, Final, FHW, CA, CA-132 Improvement, D Street to Las Flores Avenue, Stanislaus County, Due: October 27, 1986, Contact: Michael Cook (916) 551-1307

EIS No. 860383, Final, COE, CA, Lighthouse Marina Residential and Commercial Development, 10 and 404 Permit, Yolo County, Due: November 7, 1986, Contact: Tom Coe (916) 551-2270

EIS No. 860384, Final, IBR, CO, Stagecoach Reservoir Multipurpose Project, Construction, Upper Yampa River Valley, Loan, Routt County, Due: October 27, 1986, Contact: Harold Serseland (801) 524-5580

EIS No. 860385, Final, FWS, AK, Togiak National Wildlife Refuge Comprehensive Conservation Plan and Wilderness Review, Wilderness Designation Suitability, Due: October 27, 1986, Contact: William Knauer (907) 786-3399

EIS No. 860386, Draft, FWS, AK, Selawik National Wildlife Refuge, Comprehensive Conservation, Wilderness Review and Wild River Plan, Wilderness Designation Suitability, Kotzebue Sound, Due: November 10, 1986, Contact: William Knauer (907) 786-3399

EIS No. 860387, Draft, FWS, AK, Nowitna National Wildlife Refuge, Comprehensive Conservation, Wilderness Review and Wild River Plan, Wilderness Designation Suitability, Due: November 10, 1986, Contact: William Knauer (907) 786-3399

EIS No. 860388, Final, BLM, CA, Eastern San Diego County Planning Unit, Sawtooth Mountain B, Carrizo Gorge and San Felipe Hills Wilderness Study Areas, Wilderness Recommendations, San Diego County, Due: November 15, 1986, Contact: Bill Haigh (714) 351-6428

EIS No. 860389, Final, BLM, AZ, Eastern Arizona Grazing Management Program, Implementation, Due: October 27, 1986, Contact: Jerrold Collidge (602) 428-4040

Amended Notices

EIS No. 860370, Final, COE, FL, Fort Pierce Harbor, Navigation Improvement, Indian River, St. Lucie County, Published FR 9-19-86—Incorrect title

EIS No. 860361, Revised, AFS, CA, Sierra National Forest, Land and Resource Management Plan, Published FR 9-19-86—Incorrect state

EIS No. 860320, Draft, FRC, AR, OK, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, Due: October 8, 1986, Published FR 8-15-86—Review period extended.

Dated: September 23, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-21868 Filed 9-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36127 (FRL-3086-9)]

Pesticide Assessment Guidelines Subdivision O-Addendum; Availability of Final Guidance Document for Analytical Methods for Multiresidue Protocols

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This addendum on Residue Analytical Methods is primarily for the regulated industry and provides four specific Food and Drug Administration (FDA) Pesticide multiresidue method protocols for testing each pesticide under the Residue Chemistry Data Requirements in 40 CFR 158.125(b)(15). This document is now available to the public and can be purchased through the National Technical Information Service (NTIS). The NTIS order number and price for the document are provided.

ADDRESS: Address orders to: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

Orders for the Pesticide Assessment Guidelines Addendum for Residue Analytical Methods Multiresidue Protocols may be placed by telephone to the NTIS order desk and charged against a deposit account or American Express, VISA, or MasterCard or sent by mail with check, money order, or account number.

FOR FURTHER INFORMATION CONTACT: By mail:

Francis D. Griffith, Jr. Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460.

Office location and telephone number: Rm. 804 Crystal Mall—Building #2, 1921 Jefferson Davis Highway, Arlington, Virginia (703-557-7484).

SUPPLEMENTARY INFORMATION: The purpose of this Federal Register Notice is to inform pesticide registrants of the availability of pesticide multiresidue protocols for use in meeting the data requirements in 40 CFR 158.125(b)(15). These protocols are now available as an addendum to the Pesticide Assessment Guidelines Subdivision O-Residue Chemistry. Use of these testing schemes, Protocols I-IV, may indicate multiresidue methods are more suitable for the identification and determination of pesticide residues than those methods designated for the individual pesticides found in the Pesticide Analytical Manual Volume II (PAM-II).

The data developed under these Protocols will be published as entries in appropriate tables in the Pesticide Analytical Manual, Volume I. The data are for the use of any agency responsible for enforcing tolerances or monitoring residues and thus are not to be claimed as Confidential Business Information (CBI).

Data submitters who use these multiresidue protocols should note the following:

1. Data should be gathered using the FDA multiresidue method Protocols I, II, III, and/or IV. The parent compound and all metabolites covered in the tolerance should be tested. These tests should be performed only by qualified laboratory personnel and followed as specified in the current edition of the Pesticide Analytical Manual Volume I.

2. Data should be obtained from representative commodities from those

crops and/or animal products within the pesticide petition under review. If tolerances are being requested on many crops in a group of related crops, only one crop in the group need be tested. Fortified samples, in duplicate, are to be taken through each protocol and results reported as specified. Untreated control samples, in duplicate, are to be treated in the same manner.

These guidelines apply to new pesticides and to all pesticides undergoing the re-registration process. For older pesticides, data on methodology specified in this Federal Register notice may have been published in the Pesticide Analytical Manual. If such data are currently available, they will be acceptable.

Document title, prices, and order number are as follows:

Document title	NTIS Order No.	Price (hard copy)	Price (microfiche)
Pesticide Assessment Guideline Subdivision O-Addendum Residue Chemistry Data Requirements For Analytical Methods in 40 CFR 158.125–Multiresidue Protocols	PB 86 203734/AS	$9.95	$5.95

For this document, your order should specify the title, the corresponding NTIS order number, and whether hard copy or microfiche is desired. The NTIS order number is the same for both microfiche and hard copy; but the price differs for each form. Send orders to the address provided above.

Dated: September 18, 1986.

John W. Melone,

Director, Hazard Evaluation Division.

[FR Doc. 86–21821 Filed 9–25–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York, Chase Manhattan National Corporation, New York, New York, and Chase Manhattan National Holding Corporation, Newark, Delaware; to engage *de novo* in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation and operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, according to the terms and conditions contained in § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by October 13, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South Lasalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.,* Wausau, Wisconsin; to engage *de novo* through its subsidiary, First American Investment, Incorporated, Wausau, Wisconsin, in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the State of Wisconsin.

2. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, First Wisconsin Trust Company of Florida, N.A., Palm Beach, Florida, in trust and investment services to customers and prospective customers pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Florida.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Clearwater Home State Bancshares, Inc.,* Clearwater, Kansas; to engage *de novo* through its subsidiary, Home Financial Corporation, Wichita, Kansas, in making and servicing loans and other extensions of credit as would be conducted by consumer finance and mortgage companies pursuant to § 225.25(b)(1) of the Board's Regulation Y and issuing and selling money orders, savings bonds, and travelers checks pursuant to § 225.25(b)(12) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–21804 Filed 9–25–86; 8:45 am]

BILLING CODE 6210–01–M

IBT Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1986.

A. Federal Reserve Bank of Cleveland (Jone J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *IBT Bancorp, Inc.*, Irwin, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Irwin Bank and Trust Company, Irwin, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Pacific Bancshares, N.V.*, Curacao, Netherland Antilles; to become a bank holding company by acquiring 49.8 percent of the voting shares of Pacific National Bank, Miami, Florida.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cosmopolitan Bancorp Incorporated*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Cosmopolitan National Bank of Chicago, Chicago, Illinois.

2. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of First La Porte Financial Corp., La Porte, Indiana, and thereby indirectly acquire First National Bank and Trust Company of La Porte, La Porte, Indiana.

3. *Hi-Bancorp, Inc.*, Highwood, Illinois; to merge with GNP Bancorp, Inc., Mundelein, Illinois, and thereby indirectly acquire New Century Bank, Mundelein, Illinois.

D Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *JSB Bancorp, Inc.*, Jerseyville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Jersey State Bank, Jerseyville, Illinois.

2. *Republic Bancshares, Inc.*, Neosho, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Security State Bank, Republic, Missouri.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bay Holdings Corporation*, Rockport, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Portland State Bank, Portland, Texas.

2. *Hub Financial Corporation*, Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of City Bank, N.A., Lubbock, Texas.

Board of Governors of the Federal Reserve System, September 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-21805 Filed 9-25-86; 8:45 am]

BILLING CODE 6210-01-M

ONB Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "resonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questionns of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 17, 1986.

A. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1 *ONB Corporation*, Owensboro, Kentucky; to acquire Datanet, Inc., Hopkinsville, Kentucky, and thereby engage in permissible nonbanking activities associated with providing data processing services to financial institutions pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956, as amended and § 225.25 (a) and (b)(7) of the Board's Regulation Y. These activities will be conducted in Kentucky, its contiguous states and South Carolina.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire through its wholly-owned indirect subsidiary, Norwest Agencies, Inc., certain general insurance agency assets of the offices located in Kearney, Nebraska; Lincoln, Nebraska; and Wichita, Kansas of Bayly, Martin & Fay International, Inc., Forth Worth, Texas, where it is engaged in general insurance agency activities. Norwest Corporation and its subsidiaries are authorized to engage in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act of 1956, as amended. Upon consummation of this transaction, Norwest Agencies, Inc., will engage in such activities in Kearney, Nebraska; Lincoln, Nebraska; and Wichita, Kansas.

Board of Governors of the Federal Reserve System, September 22, 1986

James McAfee,

Associate Secretary of the Board.

[FR Doc. 21806 Filed 9-25-86; 8:45 am]

BILLING CODE 6210-01-M

SunTrust Banks, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The

listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Third National Corporation, Nashville, Tennessee, and thereby indirectly acquire Third National Bank in Nashville, Nashville, Tennessee; American National Bank and Trust Company of Chattanooga, Chattanooga, Tennessee; Third National Bank in Knoxville, Knoxville, Tennessee; Third National Bank in Anderson County, Lake City, Tennessee; Third National Bank in Sevier County, Sevierville, Tennessee; Mid-South Bank and Trust Company, Murfreesboro, Tennessee; Hamilton Bank of Upper East Tennessee, Johnson City, Tennessee; Merchants Bank, Cleveland, Tennessee; The First National Bank of Lawrenceburg, Lawrenceburg, Tennessee; The Union Bank, Pulaski, Tennessee; Citizens Bank, Savannah, Tennessee; and Bank of Obion County, Union City, Tennessee.

In connection with this application, Applicant proposes to acquire Third Financial Services, and its subsidiaries, Nashville, Tennessee, and thereby engage in mortgage banking including making, acquiring or servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Third National Life Insurance Company, Chattanooga, Tennessee, and thereby engage in underwriting credit life, accident and health insurance that is directly related to an extension of credit, within the Third National System, pursuant to § 225.25(b)(9) of the Board's Regulation Y; Third Data Corporation, Nashville, Tennessee, and thereby engage in providing data processing, data transmission services and data bases for facilities, primarily to financial institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y; Third National Brokerage Services, Inc., Chattanooga, Tennessee, and thereby engage in providing brokerage services, related to securities credit activities, and incidental activities such as custodial services, individual retirement accounts, and cash management services pursuant to § 225.25(b)(15) of the Board's Regulation Y; Trust Company of Tennessee, Chattanooga, Tennessee, and thereby engage in providing trust company functions and activities including activities of a fiduciary, agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-21807 Filed 9-25-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 19, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Food and Drug Administration

Subject: Agreement for Shipment of Devices for Sterilization—Revision—(0910-0131)

Respondents: Businesses or other for-profit; Small businesses or organizations

National Institutes of Health

Subject: "Epidemiologic Survey of Oral Health in School Children"—NEW—

Respondents: Individuals or households

Health Resources and Services Administration

Subject: Application for Participation in: The National Health Service Corps Scholarship Program/The Indian Health Service Scholarship Program—Revision—(0915-0072)

Respondents: Individuals or households

Subject: Documentation of Formal Educational Assistance Agreement—Existing Collection

Respondents: Non-profit institutions

OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration—(0960-0104)

Respondents: Individuals or households

OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: September 19, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-21706 Filed 9-25-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 75N-0184; DESI 10837]

Oxyphencyclimine Hydrochloride With Hydroxyzine Hydrochloride; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application (NDA) for Enarax and Vistrax Tablets, both containing a fixed combination of oxyphencyclimine hydrochloride and hydroxyzine hydrochloride. The basis for the withdrawal is that the products lack substantial evidence of effectiveness. The products have been used to treat various gastrointestinal disorders.

EFFECTIVE DATE: October 27, 1986.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with reference number DESI 10837 and directed to the Division of the Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 1, 1983 (48 FR 8589), the Director of the National Center for Drugs and Biologics (now the Center for Drugs and Biologics) evaluated the following drug products, containing oxyphencyclimine hydrochloride in fixed combination with hydroxyzine hydrochloride, as lacking substantial evidence of effectiveness:

Enarax 5, Enarax 10, Vistrax 5, and Vistrax 10 Tablets (NDA 11-784; held by Pfizer, Inc., 235 East 42nd St., New York, NY 10017 (Pfizer)).

The Director also proposed to withdraw approval of the NDA for the products and offered an opportunity for a hearing on the proposal. In response, Beecham Laboratories, a division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620 (Beecham), requested a hearing. Beecham distributes the products under license from Pfizer. Pfizer, the sponsor of NDA 11-784, did not request a hearing. However, Pfizer appointed Beecham as the sponsor of NDA 11-784 for the purpose of this proceeding and granted Beecham the authority to reference data submitted to the NDA.

Subsequently, Beecham withdrew its hearing request. Accordingly, the Director of the Center for Drugs and Biologics is withdrawing approval of the NDA for Enarax 5, Enarax 10, Vistrax 5, and Vistrax 10 Tablets.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approval NDA is covered by the NDA reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with respect to the products, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 11-043 and all amendments and supplements thereto is withdrawn effective October 27, 1986.

Shipment in interstate commerce of the products named above or any identical, related, or similar product that is not the subject of an approved NDA will then be unlawful.

Dated: September 12, 1986.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 86-21784 Filed 9-25-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N-0184; DESI 597]

Oxyphencyclimine Hydrochloride With Phenobarbital; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application (NDA) for Daricon with Phenobarbital Tablets. The product contains a fixed combination of oxyphencyclimine hydrochloride and phenobarbital. The basis for the withdrawal is that the product lacks substantial evidence of effectiveness. The product has been used to treat various gastrointestinal disorders.

EFFECTIVE DATE: October 27, 1987.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with reference number DESI 597 and directed to the Division of the Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 16, 1981 (46 FR 3977), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) evaluated the following drug product, containing a fixed combination of oxyphencyclimine hydrochloride and phenobarbital, as lacking substantial evidence of effectiveness:

Daricon with Phenobarbital Tablets (NDA 13-515; held by Pfizer, Inc., 235 East 42nd St., New York, NY 10017 (Pfizer)).

The Director also proposed to withdraw approval of the NDA for the product and offered an opportunity for a hearing on the proposal. In response, Beecham Laboratories, a division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620 (Beecham), requested a hearing. Beecham distributes the product. Pfizer, the sponsor of NDA 13-515, did not request a hearing. However, Pfizer authorized Beecham to file any relevant data and to request an opportunity for a hearing concerning the drug product.

Subsequently, Beecham withdrew its hearing request. Accordingly, the Director of the Center for Drugs and Biologics is withdrawing approval of the NDA for Daricon with Phenobarbital.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved NDA is covered by the NDA reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him

with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 13-515 and all amendments and supplements thereto is withdrawn effective October 27, 1986. Shipment in interstate commerce of the product named above or any identical, related, or similar product that is not the subject of an approved NDA will then be unlawful.

Dated: September 16, 1986.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 86-21783 Filed 9-25-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0377]

Hemex Scientific, Inc.; Premarket Approval of the Duromedics® Cardiac Valve Prosthesis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Hemex Scientific, Inc., Austin, TX, for premarket approval, under the Medical Device Amendments of 1976, of the Duromedics® Cardiac Valve Prosthesis. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 27, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bette Lemperle, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

SUPPLEMENTARY INFORMATION: On January 29, 1986, Hemex Scientific, Inc., Austin, TX 78752, submitted to CDRH an application for premarket approval of the Duromedics® Cardiac Valve Prosthesis. The Duromedics® Cardiac Valve Prosthesis is a bileaflet-type mechanical heart valve constructed of two cured shell leaflets composed of pyrolytic carbon coated on a tungsten-filled graphite substrate, a circular housing made totally of pyrolytic carbon, a cobalt-chromium alloy stiffener ring around the housing, and a carbon-coated polyester sewing ring. The construction of the valve is such that all blood contacting surfaces are either carbon or carbon coated. The approved device is intended for use as a replacement for diseased, damaged, or malfunctioning natural or prosthetic, aortic or mitral, heart valves. It is available in aortic sizes of 19, 21, 23, 25, and 27 millimeter and mitral sizes of 27, 29, 31, and 33 millimeter. The aortic and mitral valves are similar except for a difference in the suture ring configuration and in leaflet opening angles (nominal opening angles are 77° (aortic) and 73° (mitral)).

On April 21, 1986, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 29, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Bette Lemperle (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 27, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 19, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-21781 Filed 9-25-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0376]

Litton Datamedix; Premarket Approval of KAPNOMONITOR System (Carbon Dioxide Monitor)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Litton Datamedix, Sharon, MA, for premarket approval, under the Medical Device Amendments of 1976, of the KAPNOMONITOR System. After reviewing the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 27, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative

review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION: On April 14, 1986, Litton Datamedix, Sharon, MA 02067, submitted to CDRH an application for premarket approval of the KAPNOMONITOR System. The device is a transcutaneous PCO_2 ($tcpCO_2$) sensor and circuitry. The KAPNOMONITOR System is indicated for use as a trend monitor for carbon dioxide tension ($tcpCO_2$) at the skin surface for neonates and infants as an adjunct to arterial pCO_2 measurements. The KAPNOMONITOR System can be used with Servomed SMS, SMV, and SMC Bedside Units with heart rate, respiration rate, blood pressure, temperature, transcutaneous oxygen, noninvasive blood pressure, cardiac output, pulse amplifier, and bedside recorder.

On June 6, 1986, the Anesthesiology and Respiratory Therapy Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 29, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Michael S. Gluck (HFZ-430), address above.

Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an indepenent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petition shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 27, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 19, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-21785 Filed 9-25-86; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committee.

Meetings: The following advisory committee meetings are announced:

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. October 17, 9 a.m., Rm. T-416, Center for Devices and Radiological Health, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 17, 9 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 11:30 a.m.; closed presentation of data, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7726.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulations.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 10, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of the proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) on a high frequency ventilator and will discuss high frequency ventilation in general.

Closed presentation of data. Trade secret and/or confidential commercial or financial information will be presented to the committee regarding the manufacturing and in vitro data contained in the PMA for a high frequency ventilator. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Allergenic Products Advisory Committee

Date, time, and place. October 20 and 21, 8:30 a.m., October 20, Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD; 8:30 a.m., October 21, Rm. 121, Bldg. 29, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, October 20, 8:30 a.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m.; closed committee discussion, 4 p.m. to 5 p.m.; closed presentation of data, October 21, 8:30

a.m. to 3 p.m.; closed committee discussion, 3 p.m. to 4 p.m.; Clay Sisk, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational allergenic biological products administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease.

Open committee discussion. Topics include: (1) Safety of allergenic extracts prepared from source materials consisting of or containing human components such as human hair and dander, and (2) approaches to developing guidelines for the clinical testing of allergenic extracts for use in skin test diagnosis.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Closed committee discussion. The committee will receive FDA staff briefings on and will discuss trade secret or confidential commercial information relevant to pending allergenic biological product license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed presentation of data. The committee will hear trade secret or confidential commercial information relevant to pending allergenic biological product license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anti-infective Drugs Advisory Committee

Date, time, and place. October 20 and 21, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, October 20, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 p.m., unless public participation does not last that long; closed presentation of data, 1 p.m. to 5 p.m.; open committee discussion, October 21, 8:30 a.m. to 12 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss endpoints for evaluating anti-mycobacterial drugs, and use of placebo-controlled trials for anti-viral drugs for influenza.

Closed presentation of data. The committee will hear trade secret or confidential commercial information relevant to a premarket approval application for a contact lens solution. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. October 20 and 21, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 20, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open public hearing, October 21, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

General function of committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 30, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 20, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for Nd:YAG lasers and intraocular lenses (IOL's), and may discuss specific PMA's for these devices. If discussion of all pertinent Nd:YAG laser or IOL issues is not completed, discussion will be continued the following day.

FDA will summarize comments received from interested persons regarding the committee's July 17, 1986, recommendation that both the committee and FDA use an updated grid of IOL data (data from the article by Stark, W.J., et al., 1983, "The FDA Report on Intraocular Lenses," *Ophthalmology*, 90(4):311-317) in review of IOL PMA's and plan to update the grid at least every 2 years. FDA will announce the agency's decision on the recommendation. Comments on this recommendation must be received by September 30 at the following address: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

The committee will hear testimony from interested persons on the long-term safety and the indications for use of anterior chamber IOL's. IOL sponsors, implanters, organizations, and others wishing to speak should submit a summary of planned remarks, an estimate of time requested, and a request for any necessary audiovisual equipment by September 26 to the following address: Halyna P. Breslawec, Center for Devices and Radiological Health (HFZ-403), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

On October 21, the committee will discuss PMA's for contact lenses and other ophthalmic devices and requirements for PMA approval.

Closed committee deliberations. On October 20 and 21, the committee may discuss trade secret or confidential commercial information relevant to PMA's for IOL's, Nd:YAG lasers, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. October 24, 8:30 a.m., Rm. 703-727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration,

8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 14, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for a transluminal percutaneous coronary angioplasty catheter, a transesophageal pacemaker, and a pulse generator system. There will also be a brief discussion of a guidance document for the premarket approval of preenactment replacement heart valves.

Closed committee deliberations. If necessary, the committee may discuss trade secret or confidential commercial or financial information regarding the PMA's listed above. The portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time, and place. October 27 and 28, 9 a.m., Hubert H. Humphrey Bldg., Rm. 337–339A, 200 Independence Ave. SW., Washington, DC

Type of meeting and contact person. Open public hearing, October 27, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 p.m.; closed committee deliberations, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; open public hearing, October 28, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 6, 1986, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 27, the committee will discuss a premarket approval application (PMA) for a radioimmunoassay for the determination of cyclosporine concentrations in blood, plasma, or serum. On October 28, the committee will discuss a petition for reclassification of a device utilized for the quantitative measurement of 1,25-dihydroxyvitamin D in serum or plasma by radioreceptor assay.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information relevant to the PMA for a radioimmunoassay for the determination of cyclosporine concentrations in blood, plasma, or serum. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel

Date, time, and place. October 30 and 31, 9 a.m., Rm. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 30, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open committee discussion, October 31, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 10, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a diabetes in vitro diagnostic assay, and possibly a premarket approval application for a tumor marker in vitro diagnostic assay.

Closed presentation of data. Trade secret or confidential commercial information will be presented to the committee regarding the premarket approval application for diabetes and tumor marker in vitro diagnostic assays. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review and discuss trade secret or confidential commercial information regarding the premarket approval applications for diabetes and tumor marker in vitro diagnostic assays. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. October 30 and 31, 8:30 a.m., Bldg. 31, Conference Rm. 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 30, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 4:30 p.m.; closed committee deliberations, October 31, 8:30 a.m. to 3 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committe discussion. The committee will discuss clinical data for Ty21a typhoid vaccine and will review the intramural research program: Laboratory of Molecular Immunology,

Division of Biochemistry and Biophysics.

Closed committee deliberations. On October 30, the committee will review part of the intramural research program in the Office of Biologics Research and Review. This session of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with this research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). On October 31, the committee will review trade secret or confidential commercial information relevant to pending license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. October 31, 8 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m.; open committee discussion 9 a.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 5:30 p.m.; Sherry L. Phillips, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendation for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 21, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a prosthetic ligament device and for a bone cement, and guidelines for the investigation of prosthetic ligament devices and electrical bone growth stimulation devices. The committee may also discuss a reclassification petition for the metal/polymer and semiconstrained hip prosthesis which includes and aluminum-oxide ceramic head.

Closed committee deliberations. The committee may review or discuss trade secret or confidential commercial information relevant to PMA's for a prosthetic ligament device and for a bone cement. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is previleged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or

devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 22, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-21782 Filed 9-25-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement and Proposed Funding Preference for Grants for Establishment of Departments of Family Medicine

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1987 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of section 780 of the Public Health Service Act, as amended by Pub. L. 99-129.

The Administration's budget request for Fiscal Year 1987 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Section 780 authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under section 786(a), Title VII, of the Public Health Service Act.

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy.

To receive support, programs must meet the requirements of final regulations as set forth in 42 CFR Part 57, Subpart R.

Section 780, as amended by Pub. L. 99-129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Proposed Funding Preference

It is proposed to give preference to applicants that (1) demonstrate a commitment to increased enrollment and retention of minority and disadvantaged students in their programs or show evidence of efforts to recruit minority and disadvantaged students; and (2) demonstrate the potential to continue the projects on a self-sustaining basis.

Interested persons are invited to comment on the proposed funding preference. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1987 award cycle, this comment period has been reduced to 30 days. All comments received on or before October 27, 1986, will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed funding preference is to be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm. 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D32), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Division of Medicine, Multidisciplinary Resources Development Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-25, Rockville, Maryland 20857, Telephone: (301) 443-3614.

The standard application form and specific instructions for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline date is January 16, 1987. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postamrked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: August 7, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-21832 Filed 9-25-86; 8:45 am]

BILLING CODE 4160-15-M

Application Announcement and Proposed Funding Preference for Grants for Faculty Development in General Internal Medicine and/or General Pediatrics

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1987 Grants for Faculty Development in General Internal Medicine and/or General Pediatrics are being accepted under the authority of section 784 of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 784 of the Public Health Service Act authorizes Federal assistance to schools of medicine and osteopathy, public or private nonprofit hospitals or other public or private nonprofit entities for planning,

developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine and/or general pediatrics training programs. These grants also provide direct support in the form of traineeships to physicians in training.

In addition, section 784 authorizes the award of grants to support general internal medicine and/or general pediatrics residency training programs. A separate grant program exists for this purpose.

Section 784, as amended by Pub. L. 99-129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to general internal medicine and general pediatrics in their medical education training programs.

Proposed Funding Preference

It is proposed to give preference to applicants that demonstrate a commitment to increase participation by minority physicians in their programs or show evidence of efforts to recruit minority physicians.

Interested persons are invited to comment on the proposed funding preference. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1987 award cycle, this comment period has been reduced to 30 days. All comments received on or before October 27, 1986, will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed funding preference is to be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm. 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

The Administration's budget request for Fiscal Year 1987 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-28), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Chief, Primary Care Graduate Medical Education Branch, Division of Medicine, Health Resources and Services Administration, Bureau of Health Professions, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: 443-5590.

The standard application form and specific instructions for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline date is November 14, 1986. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.900 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: August 7, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-21831 Filed 9-25-86; 8:45 am]

BILLING CODE 4160-15-M

Application Announcement for Nurse Anesthetist Traineeship Grants and Professional Nurse Traineeship Grants and Proposed Funding Preference for Nurse Anesthetist Traineeship Grants

The Burear of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1987 Nurse Anesthetist Traineeship and Professional Nurse Teaineeship grants will be accepted under the authority of section 831 and 830 of the Public Health Service Act, as amended and invites comments on the proposed funding preference for Nurse Anesthetist Traineeship Grants.

The Administration's budget request for Fiscal Year 1987 does not include funding for these programs. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose,purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Nurse Anesthetist Traineeships

Section 831 of the Public Health Service Act, as amended by Pub. L. 99-92, the Nurse Education Amendments of 1985, authorizes grants for traineeships to prepare licensed, registered nurses to be nurse anesthetists in eligible nurse anesthetist programs.

Eligible Applicants

To be eligible to receive support, an applicant must be a public or private nonprofit institution which provides registered nurses with full-time nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools and must currently have full-time students who are registered nurses who are beyond the 12th month of study.

In determining the amount of the grant award, the Department will use a formula based on the number of approved applications and the number of full-time registered nurses who are beyond the 12th month of study.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance.*

Proposed Funding Preference

It is proposed to give preference to applicants that demonstrate a commitment to increased enrollment

and retention of minority and financially needy students in their program or show evidence of efforts to recruit minority and financially needy students.

Interested persons are invited to comment on the proposed funding preference. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1987 award cycle, this comment period has been reduced to 30 days. All comments received on or before (30 days from date of publication) will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published indicating whether the funding preference is to be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Professional Nurse Traineeships

Section 830 of the Public Health Service Act, as amended by Pub. L. 99–92, the Nurse Education Amendments of 1985, authorizes grants for: (1) Traineeships to prepare registered nurses in masters' degree and doctoral degree programs which educate such nurses to serve in and prepare as nurse practitioners, nurse administrators, nurse educators, nurse researches, or serve in and prepare for practice in other professional nursing specialties determined by the Secretary to require advanced education; and (2) traineeships to educate nurses to serve in and prepare for practice as nurse midwives.

Eligible Applicants

To be eligible to receive support, an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in eligible professional nursing specialties, or a public or nonprofit private school of nursing or entity which prepares registered nurses to practice as nurse midwives. The nurse midwife program must be approved by the American College of Nurse Midwives.

This program is listed at 13.358 in the *Catalog of Federal Domestic Assistance.*

Application Deadlines

Nurse Anesthetist Traineeships—November 3, 1986.

Professional Nurse Traineeships—November 3, 1986.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline date and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

For specific guidelines and information regarding the program aspects, contact:

Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333

Questions regarding grants policy should be directed to:

Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915

The standard application form and specific instructions for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: August 18, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–21830 Filed 9–25–86; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision and Deletion of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to delete one and revise five notices describing systems of records maintained by the Office of Youth Programs in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect organization, address, and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register.** The five notices being revised, which are published in their entirety below, are:

1. OS–25 (formerly AJC–25), Youth Conservation Corps (YCC) Enrollee and Young Adult Conservation Corps (YACC) Corpsmember Records—Interior, Office of the Secretary—25 (previously published on August 10, 1978, 43 FR 35558).

2. OS–26 (formerly AJC–26), Youth Conservation Corps (YCC) Enrollee and Young Adult Conservation Corps (YACC) Corpsmember Payroll Records File—Interior, Office of the Secretary—26 (previously published on August 10, 1978, 43 FR 35558).

3. OS–27 (formerly AJC–27), Youth Conservation Corps (YCC) Enrollee and Young Adult Conservation Corps (YACC) Corpsmember Medical Records—Interior, Office of the Secretary—27 (previously published on August 10, 1978, 43 FR 35558).

4. OS–30 Biweekly Labor List by Organization—Interior, Office of the Secretary—30 (previously published on July 28, 1983, 48 FR 34352).

5. OS–31 Job Corps Financial Records—Interior, Office of the Secretary—31 (previously published on July 28, 1983, 48 FR 34352).

The system notice for INTERIOR/AJC–28, Youth Conservation Corps (YCC) Research File—Interior, Office of the Secretary—28, previously published on April 11, 1977 (42 FR 19020), is deleted from the Department's inventory of Privacy Act systems of records. The records are no longer maintained by the Office of Youth Programs.

In all five notices published below, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dates May 24, 1985, for implementing the Privacy Act. Also in all five notices the retention and disposal statements are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

The existing routine disclosure statement pertaining to consumer reporting agencies in OS–31 is being removed from the "routine use" section of the notice, and is being published separately as prescribed in guidelines issued by OMB on March 30, 1983, July

5, 1983, and July 22, 1983, regarding the Debt Collection Act of 1982 (Pub. L. 97-365).

Since these changes do not involve any new or intended use of the information in the system of records, the notices shall be effective on September 26, 1986. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Dated: September 19, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources.

INTERIOR/OS-25

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee and Young Adult Conservation Corps (YACC) Corpsmember Records—Interior, Office of the Secretary—25.

SYSTEM LOCATION:

Pertinent Federal Records Center, National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enrollees (YCC) and corpsmembers (YACC) of USDI Federal YCC and YACC programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Current enrollees and corpsmembers USDI Application Forms and Employment and Training Administration Form 27; USDI Medical History Forms; Personal and Statistical Information. (2) Optional: Evaluation of enrollee's and corpsmember's performance by camp staff; Accident, injury, and treatment forms. (3) Past enrollees and corpsmembers: List of names and addresses. (4) Current alternates (YCC) or applicants (YACC) USDI Application Forms and Employment and Training Administration Form 27.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93-408 and Pub. L. 95-93.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) the identification of current and past enrollees and corpsmembers and current alternates or applicants; (b) for the selection of alternate upon enrollee withdrawal from program (YCC), or hiring of additional or replacement corpsmembers (YACC); (c) to provide enrollee or corpsmember participation record for school credit. Disclosures outside of the Department of the Interior may be made (1) to the U.S. Department of Agriculture in connection with joint administration of YCC and YACC programs, and to the Department of Labor in connection with joint administration of the YACC program; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcement or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (6) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in personnel jackets.

SAFEGUARDS:

In accordance with National Archives and Records Administration regulations (36 CFR 1228.150, et seq.).

RETENTION AND DISPOSAL:

In accordance with Interior Department, Office of the Secretary Records Schedule NC1-48-82-1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Youth Programs, Department of the Interior, Office of the Secretary, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addresed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, medical doctor, school or other official.

INTERIOR/OS-26

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrolle and Young Adult Conservation Corps (YACC) Corpsmember Payroll Records File—Interior, Office of the Secretary—26

SYSTEM LOCATION:

Pertinent Federal Records Center, National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Youth accepted into the YCC program and young adults accepted into the YACC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel, pay, statistical and termination data compiled by camp officials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93-408 and Pub. L. 95-93.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) the identification of current and past enrollees and corpsmembers; (b) for payroll purposes for current enrollees and corpsmember; (c) to develop demographic characteristics of enrollee and corpsmember population for statistical purposes. Disclosures outside the Department of the Interior may be made (1) to the Department of the Treasury for preparation of (a) payroll checks and (b) payroll deduction and other checks to Federal, State, and local government agencies, nongovernmental organizations and individuals; (2) to the

Internal Revenue and to State, Commonwealth, Territorial and local government for tax purposes; (3) to the Civil Service Commission in connection with the Civil Service Retirement System; (4) to another Federal agency to which an employee has transferred; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (6) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (7) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (8) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (9) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Current and past personal and statistical information on magnetic tape an printouts.

RETRIEVABILITY:

Tape reels are coded by number.

SAFEGUARDS:

In accordance with National Archives and Records Administration regulations (36 CFR 1228.150, et seq.).

RETENTION AND DISPOSAL:

In accordance with General Records Schedule No. 2, Item 1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Youth Programs, U.S. Department of the Interior, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.71.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, camp personnel.

INTERIOR/OS-27

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee and Young Adult Conservation Corps (YACC) Corpsmember Medical Records—Interior, Office of the Secretary—27.

SYSTEM LOCATION:

Pertinent Federal Records Center, National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enrollees and corpsmembers of past Interior Federal YCC and YACC programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) U.S.C.I. Medical History Forms. (2) Accident, injury and treatment forms. (3) Parental permission portion of the U.S.D.I. Application forms for YCC enrollees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93-408 and Pub. L. 95-93.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) for the adjudication of FEC medical claims, and (b) the adjudication of tort claims. Disclosures outside the Department of the Interior may be made (1) to the U.S. Department of Agriculture in connection with joint administration of the YCC program and to the U.S. Department of Agriculture and the U.S. Department of Labor in connection with joint administration of the YACC program; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

—manual records.

RETRIEVABILITY:

—by individual name.

SAFEGUARDS:

In accordance with National Archives and Records Administration regulations (36 CFR 1228.150, et seq.).

RETENTION AND DISPOSAL:

In accordance with Interior Department, Office of the Secretary Records Schedule NC1-48-82-1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Youth Programs, Department of the Interior, Office of the Secretary, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addresed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, medical doctor, and camp official compiling accident or medical treatment information.

INTERIOR/OS-30

SYSTEM NAME:

Biweekly Labor List by Organization-Interior, OS-30.

SYSTEM LOCATION:

Office of Youth Programs, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of Youth Programs and at Job Corps sites located throughout the country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, accounting information, amount of salary for a 2 week pay period.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 911, et seq., 5 U.S.C. 5101, et seq., 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of this report is to ensure that the costs for individual employees are charged to the correct location and account. The list is utilized solely by accounting staff to cost payroll to the correct accounts. Disclosures outside the Department of the Interior may be made: (1) to the U.S. Department of Justice or in a proceeding before a court of adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a Member of Congress from the record of and individual in response to an inquiry made at the requet of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche maintained in loose leaf binders.

RETRIEVABILITY:

By location, by name.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule No. 2, Item 17a.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Youth Programs, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

To determination whether the records are maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

To see your records write the System Manager. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request correction or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Employee payroll sustem, PAY/PERS, Bureau of Reclamation, Denver, Colorado.

INTERIOR/OS-31

SYSTEM NAME:

Job Corps Financial Records—Interior, OS-31.

SYSTEM LOCATION:

(1) Office of Youth Programs, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of Youth Programs and at Job Corps sites located throughout the country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, outstanding travel advances and/or travel expenses incurred during the current month, and outstanding travel debts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 911, et seq., 5 U.S.C. 5701, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to: (1) Prepare Collection and Disbursement records; (2) prepare detailed budget status reports including travel advances; (3) preparing Accounts Receivable reports by individuals; (4) preparing actual Object Classification report. These records allow this office to identify and bill those persons who have received travel or travel advance money and who owe some portion back to the U.S. Government. It also permits a reconciliation of accounts and identification of those with outstanding advances, an identification of travel performed by Object Classification and maintenance of record of disbursements and collections received at our Administrative Services Center. Disclosures outside the Department of the Interior may be made: (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a member of Congress from the record of an individual in response to an inquiry made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, printouts.

RETRIEVABILITY:

Indexed by Object Classification, by center, by soical security number, and schedule number.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Printouts destroyed yearly, microfiche retained for a period of three years and then destroyed in accordance with General Records Schedule 6, Item 1b.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Youth Programs, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write the System Manager. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request correction or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Input results from data taken from requests, claims, vouchers, etc.

[FR Doc. 86-21862 Filed 9-25-86; 8:45 am]

BILLING CODE 4310-HJ-M

Bureau of Land Management

[CA-930-06-4332-09; FES 86-29]

Availability of Final Environmental Impact Statement; Eastern San Diego County Planning Unit Wilderness

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) for the Eastern San Diego County Planning Unit wilderness proposals.

SUMMARY: This EIS assesses the environmental consequences of managing three Wilderness Study Areas (WSAs) located in southern California as wilderness or non-wilderness. The alternatives assessed in this EIS include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) two "partial wilderness" alternatives for one of the WSAs, Sawtooth Mountain B.

The names of the three WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

San Felipe Hills—5,265 acres; 0 acres suitable, 5,205 acres nonsuitable
Sawtooth Mountain B—24,696 acres; 21,926 acres suitable, 2,770 acres nonsuitable
Carrizo Gorge—14,573 acres; 14,573 acres suitable, 0 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, CA 92243. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & "C" Streets, NW., Washington, DC 20240
or
Bureau of Land Management, California State Office, 2800 Cottage Way, room 2841, Sacramento, California 95825
or
Bureau of Land Management, California Desert District Office, 1695 Spruce Street, Riverside, California 92507

FOR FURTHER INFORMATION CONTACT: Roger Zortman, Area Manager, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243, Telephone: (619) 352-5842.

Dated: September 15, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-21803 Filed 9-25-86; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 31]

Agreements Under Sections 5a and b; Chicago Suburban Motor Carriers Association, Inc.; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Revocation of antitrust immunity.

SUMMARY: The Commission dismisses Chicago Suburban Motor Carriers Association, Inc.'s, pending application for approval of its collective ratemaking agreement, and revokes all antitrust immunity for collective activities performed pursuant to that agreement.

EFFECTIVE DATE: This decision is effective September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein, (202) 275-7912
or
Louis E. Gitomer, (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy contact T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area. .

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10706 and 10321.

Decided: September 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21799 Filed 9-25-86; 8:45]

BILLING CODE 7035-01-M

Alamo Group, Inc., et al; Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principle office: Alamo Group, Inc., 609 N. 123 Bypass, P.O. Box 549, Seguin, Texas 78156-0549.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

Terrain King Corporation—Nevada
Mott Corporation—Illinois
Triumph Corporation—New Jersey
BMB Co., Inc.—Kansas
Rhino Products, Inc.—Texas

B.1. Parent corporation and address of principle office: Baxter Travenol Laboratories, Inc., 1 Baxter Parkway, Deerfield, IL 60015.

Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

AHS/Mexico, S.A. de C.V.—Mexico
Abbey Endicott, Inc.—Delaware
Abbey Medical, Inc.—Delaware
Access Devices, Inc.—Pennsylvania
American Bentley, Inc.—Delaware
American Hospital Supply Canada, Inc.—Canada
American Hospital Supply Corporation and all of its divisions including:
  Airlife
  American ACMI
  American Chemistry Systems
  American Dade
  American Edwards
  American Microscan
  American Pharmaseal Company
  American Scientific Products
  American Technology Ventures
  American V. Mueller
  Isothermal Systems
  NDM—Illinois
American Hospital Supply International Sales Corp.—California
American Hospital Supply, Equipping and Consulting, Inc.—Wyoming
American Precision Plastics Corporation—Colorado
American SMI, Inc.—Delaware
Annson Corporation—Illinois
Apheresis Therapy Group, Inc.—Delaware
Bartels Immunodiagnostic Supplies, Inc.—Washington
Baxter Travenol Diagnostics, Inc.—Delaware
Baxter Travenol World Trade Corporation—Delaware
Cirmex de Chihuahua, S.A. de C.V.—Mexico
Convertors de Mexico, S.A. de C.V.—Mexico
Entertainment Partners, Inc.—Delaware
Flint Laboratories, Inc.—Illinois
Hyland Laboratories, Inc.—Illinois
International Medical Systems, Inc.—Illinois
Laboratorios Hyland, S.A. de C.V.—Mexico
Medcom, Inc.—Delaware
MedTrain, Inc.—Delaware
Productos Urologos de Mexico, S.A. de C.V.—Mexico
TTWS, Inc.—Delaware
TWHC, Inc.—Delaware
Taylor Surgical Supply, Inc.—Texas
The Adicon Corporation—Illinois
Travenol Acquisition Sub, Inc.—Delaware
Travenol Export Corporation—Nevada
Travenol Canada, Inc.—Canada
Travenol Laboratories Canada, Ltd.—Canada
Travenol Laboratories, Inc. and all of its divisions including:
  Adicon Division
  Clinical Assays Division
  Compucare, Inc.
  Dayton Flexible Products Division
  Diagnostics Division
  Dynamic Control Division
  Fenwal Division
  Hospital Therapy Division
  Integrated Healthcare Technologies Division
  JS/Data Division
  Laboratory Systems Division
  Medical Products Division
  Nutrition and Flow Control Division
  Physical Therapy Services
  Respiratory Therapy Division
  Travacare Division
  Travenol Industrial Division
  Travenol Pharmacy Services—Delaware
Travenol, S.A. de C.V.—Mexico
Travenol Ventures, Inc.—Delaware

C. 1. Parent Corporation and address of principal office: The Gillette Company, Prudential Tower Building, Boston, Massachusetts 02199.

2. Wholly-owned subsidiary which will participate in the operations and state of incorporation: Braun, Inc.—State of Incorporation: Delaware.

D. 1. Parent Corporation and address of principal office: Mack Industries, Inc., 201 Columbia Road, Valley City, Ohio 44280—Incorporated in the State of Ohio.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporations:

(1) The Warren Septic Tank Company incorporated in the State of Ohio
(2) American Precast Corporation incorporated in the State of Florida
(3) American Lift Stations Corp., Inc. incorporated in the State of Florida
(4) Mack Utility Vault, Inc. incorporated in the State of Ohio
(5) Mack Concrete Industries, Inc. incorporated in the State of Florida
(6) Mack Vault Company of Toledo incorporated in the State of Ohio

E. 1. Parent corporation and address of principal office: Sanborn Manufacturing Company, 118 West Rock Street, Springfield, MN 56078.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporations: Sanborn Fluid Power Co., 1900 East First Avenue, Mountain Lake, MN 56159—Incorporated in Minnesota.

F. 1. Parent corporation and address of principal office: Sony Corporation of America (SONAM), Sony Drive, Mail Drop 1-2, Park Ridge, NJ 07656.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporations:

A. Sony Aviation, Inc. (Delaware)
B. Harvey Raymond, Inc. (New York)
C. Sony Magnetic Products, Inc. of America (Alabama)
D. Sony Technology Center, Inc. (New York)
E. Cal-Tech Cabinet Corp. (California)
F. MCI, Inc. (New Jersey)
G. Digital Audio Disc Corporation (Delaware)
H. SMPA Domestic International Sales Corp. (Alabama)

Noreta R. McGee,

Secretary.

[FR Doc. 86-21798 Filed 9-25-86; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-252 (Sub-2X)]

Northern Missouri Railroad Company; Exemption; To Discontinue Operations in Davis, Gentry, and Nodaway Counties, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Northern Missouri Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, (1) for the discontinuance of operations over approximately 12.6 miles of railroad in Nodaway County, MO, and (2) for the future discontinuance of operations over approximately 80.6 miles of rail line in Daviess, Gentry, and Nodaway Counties, MO, subject to employee protective conditions in both (1) and (2).

DATES: This exemption will be effective October 6, 1986. Petitions to reopen must be filed by October 16, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-252 (Sub-2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: John D. Heffner, Suite 1100, 1133 15th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Josepn H. Dettmar; (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate

Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 9, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamobley dissented in part with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21797 Filed 9-25-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-179X)]

Seaboard System Railroad, Inc.; Exemption; Abandonment in Letcher County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Seaboard System Railroad, Inc., from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon its 11.94-mile line of railroad in Letcher County, KY, subject to standard employee protective conditions.

DATES: This exemption will be effective on October 27, 1986. Petitions for stay must be filed by October 6, 1986, and petitions for reconsideration must be filed by October 16, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-179X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's Representative: Charles M. Rosenberger, 500 Water Street Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll free (800) 424-5403.

Decided: September 9, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons, joined by Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21796 Filed 9-25-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30901]

Wisconsin and Calumet Railroad Company, Inc.; Trackage Rights Exemption; Burlington Northern Railroad Company

Burlington Northern Railroad Company has agreed to grant trackage rights to Wisconsin and Calumet Railroad Company, Inc., over its line of railroad between a point in Farm Lot 43 and a point at or near a facility commonly referred to as FS Corporation, a distance of approximately 1.8 miles near Prairie du Chien, Crawford County, WI. The trackage rights will be effective on September 15, 1986.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: September 17, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21795 Filed 9-25-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 180)]

CSX Transportation Inc.; Abandonment of Railroad Services—Between Clearwater and Elfers in Pinellas and Pasco Counties, FL; Notice of Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 24.16-mile rail line known as the Dunedin Subdivision between Clearwater and Elfers, FL. The line runs for milepost ARE-881.23 at Clearwater to milepost ARE-866.05 at Chemical, FL, thence over 2.67 miles of a former Industrial Lead (which does not have mileposts) to Victor, FL, thence east from milepost SYB-880.97 to milepost SYB 876.97 at Woods, FL, thence from milepost SYA-876.80 to milepost SYA-879.38 at Elfers in Pinellas and Pasco Counties, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21922 Filed 9-25-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Motion To Terminate; Competitive Impact Statements and Proposed Consent Judgments; United States Borax and Chemical Corp. et al.

Notice is hereby given that United States Borax and Chemical Corporation ("U.S. Borax"), as successor to defendant United States Potash Company, and Kerr-McGee Corporation and Kerr-McGee Chemical Corporation ("Kerr-McGee"), as successor to defendant American Potash and Chemical Corporation, have filed with the United States District Court for the Southern District of New York motions to terminate the final decree in *United States* v. *American Potash and Chemical Corporation, et al.*, Civil No. 8-498; and Ideal Basic Industries, Inc. ("Ideal"), as successor to defendant Potash Company of America, has filed an affidavit of compliance with the decree; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the decree, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on May 15, 1940) alleged that the defendants had agreed to fix the price of potash and otherwise eliminate competition among themselves. The decree (entered on May 21, 1940) enjoins the defendants from agreeing to: (1) Fix the prices to be charged for potash, or the terms or conditions of sale on the discounts to be allowed to various purchasers or classes of purchasers; (2)

refrain from competing with each other in the sale of potash; (3) quote pricing only on the basis of C.I.F. (cost, insurance and freight) certain ports or selecting the ports to be used for the purpose of such price quotations; and (4) refuse to sell potash to individual farmers, farm cooperatives or to fertilizer mixers not approved by all the defendants.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the complaint and consent decree, U.S. Borax's and Kerr-McGee's motion papers, Ideal's affidavit, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the Court in connection with this motion will be available for inspection at Room 7233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to John W. Clark, Chief, Professions and Intellectual Property Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone 202-724-6335).

Dated: September 19, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-21872 Filed 9-25-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-9]

Bernard Leroy Langston III, M.D.; Grant of Registration

This matter came before the Drug Enforcement Administration (DEA) after Bernard Leroy Langston III, M.D., the "Respondent" herein, requested a hearing with respect to the issues raised by two Orders to Show Cause, dated December 17, 1984 and March 11, 1985, seeking to deny the Respondent's then-pending application for registration and to revoke Respondent's DEA registration as a practitioner under 21 U.S.C. 823(f). Proceedings with respect to the two Orders to Show Cause were consolidated and the hearing in this matter was held in Wilmington, North Carolina on May 14, 1985. Administrative Law Judge Francis L. Young presided. On October 24, 1985, Judge Young issued his report and recommended findings of fact and conclusions of law and, on November 22, 1985, he transmitted the entire record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that the Respondent is a graduate of the University of South Carolina who earned his Bachelor of Science in Pharmacy degree in 1968 and Doctor of Medicine degree in 1972. Respondent practiced medicine in South Carolina from 1973 until 1977. In 1974, an investigation conducted by Agents of the South Carolina Bureau of Drug Control revealed that Respondent had been prescribing controlled substances without legitimate medical purpose. As a result of this investigation, Respondent surrendered his State and Federal controlled substance privileges in Schedules II and IIN for a period of two years.

In July 1976, Respondent's full controlled substance privileges were restored. Barely two months later, Respondent was again suspected of prescribing controlled substances in an unlawful manner. South Carolina officers commenced a new investigation in March of 1977. During the course of this investigation, an Agent acting in an undercover capacity purchased numerous prescriptions for controlled substances, under various names, without medical justification or physical examination. The investigation led to Respondent's conviction, in the United States District Court for the District of South Carolina, of multiple felony offenses relating to his prescribing of controlled substances. Respondent was sentenced to a prison term of five years and actually served twenty months. Respondent's license to practice medicine in South Carolina was suspended indefinitely and his DEA registration was revoked. At the time of his conviction, Dr. Langston was addicted to various controlled substances.

The Administrative Law Judge found that when Respondent was released from Federal custody, he voluntarily enrolled in an impaired physician program and, although free to leave at any time, he remained with the program until he completed it in September 1982. Respondent has been deemed completely rehabilitated by those responsible for his treatment.

The Respondent has resumed the practice of medicine and is now licensed to practice in North Carolina, South Carolina and Georgia. Dr. Langston is now practicing in Shallotte, North Carolina, a small town in a rural county which has experienced an on-going shortage of physicians. In seeking and obtaining his medical privileges in North Carolina, the Respondent was totally candid with the various physicians and credentials committees by whom he was interviewed. His current associates think very highly of Dr. Langston and no recurrence of his past drug abuse problems have been noted. In the course of the hearing in this matter, Respondent freely admitted his past conduct. He stated that he was heavily involved in the personal abuse of alcohol and various Schedule II substances. He led a dissolute life style and freely made the most abusable drugs available to others. However, after having considered the Respondent's activities over the past eight years, and having observed the Respondent's demeanor at the hearing, the Administrative Law Judge concluded that this physician has indeed been rehabilitated. He has been accepted by his new community and there is no reason to believe that he will abuse his controlled substance privileges again, either personnally or by involving others.

The Administrative Law Judge concluded that although there is a lawful basis for revoking Dr. Langston's DEA registration, that should not be done and Dr. Langston should be permitted to continue to demonstrate that he can now handle controlled substances responsibly. The Administrator adopts the recommended findings and conclusions of the Administrative Law Judge in their entirety. The Administrator concludes, as did the Administrative Law Judge, that there is little likelihood that Dr. Langston will again abuse controlled substances or his registration. In the unlikely event that such abuse does occur, Respondent's felony conviction and the public interest factors found in 12 U.S.C. 823(f) will provide a basis for the swift and certain termination of Dr. Langston's controlled substance privileges. Accordingly, Respondent's

registration shall not be revoked and any pending application for renewal shall not be revoked and any pending application for renewal thereof, or for a new registration, is hereby granted.

Dated: September 19, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-21771 Filed 9-25-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-17,833]

Termination of Investigation; Ft. Worth Pipe & Supply Division

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 1986 in response to a worker petition which was filed on behalf of workers at Ft. Worth Pipe & Supply Division, Fort Morgan, Colorado.

A certification applicable to the workers of Ft. Worth Pipe & Supply Division, Fort Morgan, Colorado was issued on January 17, 1984 (TA-W-14,794). That certification remained in effect until January 17, 1986—two years from its date of issuance. The investigation has revealed that all the workers at the Fort Morgan, Colorado facility of Ft. Worth Pipe & Supply Division were laid off on or before December 1985 and that the facility was closed permanently at that time. Therefore, all workers are covered by an existing certification. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 15th day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-21769 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,832]

Termination of Investigation; Ft. Worth Pipe & Supply Division

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 1986 in response to a worker petition which was filed on behalf of workers at Ft. Worth Pipe & Supply Division, Abilene, Texas.

A certification applicable to the workers of Ft. Worth Pipe & Supply Division, Abilene, Texas was issued on January 17, 1984 (TA-W-14,795). That certification remained in effect until January 17, 1986—two years from its date of issuance. The investigation has revealed that all the workers at the Abilene, Texas facility of Ft. Worth Pipe & Supply Division were laid off on or before December, 1984 and that the facility was closed permanently at that time. Therefore, all workers are covered by an existing certification. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 15th day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-21770 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,607]

Roane Alloys Division, Samancor Metals and Minerals, Rockwood, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 30, 1986 in response to a worker petition received on June 12, 1986 which was filed on behalf of workers at Roane Alloys Division, Samancor Metals and Minerals, Rockville, Tennessee.

The petitioning group of workers are covered under certification (TA-W-13,905). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-21778 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,672 Dexter, MO; TA-W-17.084 Bloomfield, MO; TA-W-17.143 Webb City, MO]

Elder Manufacturing Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 15, 1986, applicable to all workers of Elder Manufacturing Company in Dexter, Missouri, Bloomfield, Missouri and Webb City, Missouri. The Notice of Certification was Published in the Federal Register on August 12, 1986 (51 FR 28904).

Based on additional information furnished to the Department by the company, workers at the Webb City, Missouri plant were laid off a few days before the November 1, 1985 impact date and others were retained beyond the January 1, 1986 termination date in the certification to close down the plant. The intent of the certification is to cover all workers who were adversely affected because of increased import competition of men's, boys' and children's apparel. The notice, therefore is amended by providing a new impact date of October 25, 1985 and a new termination date of March 15, 1986 to cover all workers at the Webb City plant.

The amended notice applicable to TA-W-16,672; TA-W-17.084 and TA-W-17.143 is hereby issued as follows:

All workers of the Dexter, Missouri plant of Elder Manufacturing Company who became totally or partially separated from employment on or after November 15, 1984 and all workers of the Bloomfield, Missouri plant of Elder Manufacturing Company who became totally or partially separated from employment on or after December 16, 1984 and all workers of the Webb City, Missouri plant of Elder Manufacturing Company who became totally or partially separated from employment on or after October 25, 1985 and before March 15, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of August 1986.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 86-21773 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,988—TA-W-17,052]

Intel Corp., Santa Clara, CA; Amended Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance on June 26, 1986, applicable to all workers of Intel Corporation, Santa Clara, California. The Notice of Determinations was published in the Federal Register on June 24, 1986 (51 FR 22990).

Based on additional information furnished to the Department by the company, workers were retained beyond the January 1, 1986 termination

date in the determination to close down the plant. The intent of the notice is to cover all workers at the Hillsboro, Oregon, Aloha, Oregon, and Beaverton, Oregon plants who were adversely affected because of increased import competition of DRAMs. The notice, therefore, is amended by providing a new termination date of July 1, 1986 to cover all workers at the Hillsboro, Aloha and Beaverton plants.

The amended notice applicable to TA-W-16,988-17,052 is hereby issued as follows:

All workers of the Intel Corporation, Santa Clara, California engaged in employment related to the production of DRAMs who became totally or partially separated from employment on or after November 26, 1984 and before July 1, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA-W-16,999—Hillsboro, Oregon
TA-W-17,000—Aloha, Oregon
TA-W-17,001—Aloha, Oregon
TA-W-17,002—Beaverton, Oregon

Further, I conclude that increases of imports of articles like or directly competitive with EPROMs did not contribute imprtantly to the decline in sales or production and to the total or partial separation of workers at the Intel Corporation, Santa Clara, California.

In accordance with the provisions of the Act, workers at the Intel Corporation locations listed below are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA-W-	Locations
16,988	Chandler, AZ
16,989	Phoenix, AZ
16,990	Tempe, AZ
16,991	Santa Clara, CA
16,992	Sunnyvalle, CA
16,993	Santa Clara, CA
16,994	Santa Cruz, CA
16,995	Livermore, CA
16,996	Folsom, CA
16,997	San Jose, CA
16,998	Rio Rancho, NM
17,003	Huntsville, AL
17,004	Phoenix, AZ
17,005	Tucson, AZ
17,006	Canoga Park, CA
17,007	El Segundo, CA
17,008	Mountain View, CA
17,009	Sacramento, CA
17,010	San Diego, CA
17,011	Santa Ana, CA
17,012	Colorado Springs, CO
17,013	Denver, CO
17,014	Boulder, CO
17,015	Danbury, CT
17,016	Altamonte Springs, FL
17,017	Ft. Lauderdale, FL
17,018	St. Petersburg, FL
17,019	Norcross, GA
17,020	Schaumburg, IL
17,021	Indianapolis, IN
17,022	Cedar Rapids, IA
17,023	Overland Park, KS
17,024	Greenbelt, MD
17,025	Hanover, MD
17,026	Chelmsford, MA
17,027	Wellesley Hills, MA
17,028	West Bloomfield, MI
17,029	Bloomington, MN
17,030	Earth City, MO
17,031	Edison, NJ
17,032	Hauppauge, NY
17,033	Rochester, NY
17,034	Wappingers Falls, NY
17,035	Albuquerque, NM
17,036	Charlotte, NC
17,037	Raleigh, NC
17,038	Cleveland, OH
17,039	Dayton, OH
17,040	Tulsa, OK
17,041	Beaverton, OR
17,042	Camphill, PA
17,043	Ft. Washington, PA
17,044	Pittsburgh, PA
17,045	Austin, TX
17,046	Dallas, TX
17,047	Houston, TX
17,048	Murray, UT
17,049	Richmond, VA
17,050	Bellevue, WA
17,051	Spokane, WA
17,052	Brookfield, WI

Signed at Washington, DC, this 4th day of September 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-21774 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Dentex Shoe Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 6, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 6, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 15th day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of:)	Location	Date received	Date of petition	Petition No.	Articles produced
Dentex Shoe Corp. (workers)	Laredo, TX	9/8/86	9/2/86	TA-W-17, 957	Casual leather shoes.
Intel Corp. (company)	Las Piedras, PR	9/8/86	8/28/86	TA-W-17, 958	DRAM's.
Allentown Cement Co. (Boilermakers)	Blandon, PA	9/5/86	8/12/86	TA-W-17, 959	Cement.
Millinocket Foundry & Machine Co. (workers)	Millinocket ME	9/5/86	8/29/86	TA-W-17, 960	Bronze and alum, castings.
Union Frondenberg USA (workers)	Olney IL	8/22/86	8/11/86	TA-W-17, 961	Bicycle pedals and parts for men, women and children.
National Mines Service Co. (wkrs)	Greenup, KY	9/4/86	9/2/86	TA-W-17, 962	Underground heavy mining machinery.
Colgate Palmolive (company)	Jersey City NJ	9/3/86	8/28/86	TA-W-17, 963	Cleaning detergents, toothpastes, mouthwash.
Brunswick, Bowling & Billiards (IAMAW)	Muskegon, MI	9/3/86	8/24/86	TA-W-17, 964	Automatic pensetters, bowling balls, bowling pins etc.
Paper, Calmenson & Co. (workers)	St. Paul MN	8/8/86	7/31/86	TA-W-17, 965	Warehouses steel products.
Stem Co-Engler (workers)	Jersey City NJ	9/3/86	8/18/86	TA-W-17, 966	Mileage recording instruments.
Consolidated Metco Inc. (workers)	Sidney OH	8/5/86	7/28/86	TA-W-17, 967	Aluminum castings.
Perry Gas Co (workers)	Odessa, TX	9/3/86	8/26/86	TA-W-17, 968	Field equipment specifically fabricate pressure equipment.
Keystone Carbon Co. (IUE)	St. Marys, PA	8/29/86	8/25/86	TA-W-17, 969	Bearings and gears.
Don Moor (workers)	New York NY	9/4/86	9/2/86	TA-W-17, 970	Office workers (boys knitwear).
Control Data Corp. (company)	Minnetonka MN	7/21/86	7/16/86	TA-W-17, 971	Technical publications.
Control Data Corp. (workers)	Minneapolis MN	7/21/86	7/15/86	TA-W-17, 972	Administrative services and support personnel.
Wirdyne (company)	Derry PA	9/3/86	8/21/86	TA-W-17, 973	Wire fabricator, houseware products.

APPENDIX—Continued

Petitioner (Union/workers or former workers of:)	Location	Date received	Date of petition	Petition No.	Articles produced
Control Data Corp. (company)	Roseville MN	8/15/86	8/13/86	TA-W-17, 974	CRT terminal for data processing.
Twilight Industries Inc. (UMWA)	Belle Vernon PA	8/25/86	8/17/86	TA-W-17, 975	Steam coal mining.
Salem Shoe Mfg Co. (workers)	Salem MA	8/22/86	8/19/86	TA-W-17, 976	Mens work shoes and work boots, mens outerwear boots.
Eastman Kodak Co., Kodak Processing Lab (workers)	Rochester, NY	8/21/86	8/18/86	TA-W-17, 977	Color and black-and white film prints, processed slide film, enlargements, poster prints, reprints.
North American Philips (AIW)	Owensboro, KY	9/2/86	8/26/86	TA-W-17, 978	Light bulbs, households and businesses.
Hilti Steel Industrial Div., Hilti, Inc (wkrs)	Cleveland, OH	9/2/86	8/27/86	TA-W-17, 979	Flat rolled steel production.
Joseph M. Herman Shoe Co. (company)	Scarborough, ME	8/25/86	8/20/86	TA-W-17, 980	Men's work and outdoor shoes.
Allen Guage & Tool Co., Guage Dept. (wkrs)	Pittsburgh PA	9/2/86	8/28/86	TA-W-17, 981	Guages for measuring pipe thread.
Stride Rite Mfg. (company)	Brockton, MA	8/25/86	8/20/85	TA-W-17, 982	Infant's and children shoes.
Weyerhaeuser Co., Plywood Operation (IWA)	Springfield, OR	9/2/86	8/26/86	TA-W-17, 983	Softwood.
Weyerhaeuser Co., Veneer Plant (IWA)	Cottage Grove, OR	9/2/86	8/26/86	TA-W-17, 984	Softwood veneer.
MuRata Erie North America, Inc. (wkrs)	Rockmart, GA	8/23/86	8/19/86	TA-W-17, 985	Ceramic disc capacitors.
PFP, Inc. (workers)	North Huntingdon, PA	8/19/86	8/12/86	TA-W-17, 986	Kerographic toners and developers supplies.
Ansewn Shoe (workers)	Bangor, ME	8/22/86	8/18/86	TA-W-17, 987	Mens and womens shoes.
Branson Corp. (workers)	Newton, NJ	8/5/86	7/21/86	TA-W-17, 988	Miniature electrical relays.
Champion International Corp. (wkrs)	Klickitat, WA	8/8/86	7/31/86	TA-W-17, 989	Logging operations.
Champion International Corp. (wkrs)	Libby, MT	8/12/86	8/6/86	TA-W-17, 990	Logging operations.
Champion International Corp. (wkrs)	Bonner, MT	8/11/86	8/6/86	TA-W-17, 991	Logging operations.
Champion International Corp. (wkrs)	Morton, WA	8/12/86	8/6/86	TA-W-17, 992	Logging operations.
N.A.E. Inc., Diodes Inc. Div. (IUE)	Lynn, MA	9/2/86	8/29/86	TA-W-17, 993	Semi-conductors for electronics industries.
Hilla's Fashions (workers)	Shepton, PA	8/29/86	8/26/86	TA-W-17, 994	Womens sportswear and dresses.
Belfast Manufacturing (workers)	Belfast, ME	8/29/86	8/15/86	TA-W-17, 995	Womens outerwear.
Big River Manufacturing Co. (ACTWU)	Kittanning, PA	8/27/86	8/22/86	TA-W-17, 996	Boys knitwear.
Greenway Manufacturing Co. (ACTWU)	WAYNesburg, PA	8/2/86	8/22/86	TA-W-17, 997	Boys knitwear.
Consolidated Cigar Co. (workers)	Berwick, PA	8/29/86	8/26/86	TA-W-17, 998	Cigars.
Weathercraft (ACTWU)	Phillipsburg, PA	8/29/86	8/21/86	TA-W-17, 999	Outerwear.
ARCO Oil & Gas Co. (workers)	Dallas, TX	8/26/86	8/22/86	TA-W-17, 000	Provides data processing support services.
ARCO Oil & Gas Co. Research Labs (workers)	Plano, TX	8/26/86	8/22/86	TA-W-17, 001	Provides research services.
Crescent Silver Mine, Inc (workers)	Kellogg, ID	8/21/86	8/18/86	TA-W-17, 002	Office workers (silver concentrate).
Crescent Silver Mine, Inc. (workers)	Big Creek, ID	8/21/86	8/18/86	TA-W-17, 003	Silver mining.
General Electric, Nashville Motor Plant (company)	Hendersonville, TN	8/19/86	8/12/86	TA-W-17, 004	AC electric motors.
Honeywell Large Computer Products (workers)	Phoenix, AZ	8/18/86	8/12/86	TA-W-17, 005	Large mainframe computers.
Suttle Apparatus (workers)	Lawrenceville, IL	7/31/86	7/2/86	TA-W-18,006	Connecting devices for telephone use.
Tran-Spectra, Inc. (workers)	Greenfield, TN	8/8/86	8/4/86	TA-W-18,007	Miniature electrolytic capacitors.
Beth Energy Mines, Inc. (UMWA)	Ebensburg, PA	9/8/86	8/1/86	TA-W-18,008	Coal mining.
Koomey, Inc. (workers)	Brookshire, TX	9/3/86	8/24/86	TA-W-18,009	Blowout preventers for drilling operations.
Pool Company (workers)	Tioga, ND	9/3/86	8/25/86	TA-W-18,010	Repairing oil wells.
Pool Company (workers)	Williston,ND	9/3/86	8/25/86	TA-W-18,011	Repairing oil wells.
Standard Oil Production Co. (Co.)	Anchorage, AK	9/3/86	8/22/86	TA-W-18,012	Oil and gas production.
Standard Oil Production Co. Exec. Office (Co.)	Houston, TX	9/3/86	8/22/86	TA-W-18,013	Oil and gas production.
Standard Oil Production Co. Gulf Coast Div. (Co.)	Houston TX	9/3/86	8/22/86	TA-W-18,014	Oil and gas production.
Standard Oil Production Co. Continental Div. (company)	Dallas, TX	9/3/86	8/22/86	TA-W-18,015	Oil and gas production.
Standard Oil Production Co. Technology Center (Co.)	Dallas, TX	9/3/86	8/22/86	TA-W-18,016	Oil and gas production.
Standard Oil Production Co. (Co.)	Midland, TX	9/3/86	8/22/86	TA-W-18,017	Oil and gas production.
Standard Oil Production Co. (Co.)	Oklahoma City, OK	9/3/86	8/22/86	TA-W-18,018	Oil and gas production.
Standard Oil Production Co. Headquarters (Co.)	Cleveland, OH	9/3/86	8/22/86	TA-W-18,019	Oil and gas production.
Standard Oil Production Co. Warrensville Lab (Co.)	Cleveland, OH	9/3/86	8/22/86	TA-W-18,020	Oil and gas production.
Standard Oil Production Co. (Co.)	Casper, WY	9/3/86	8/22/86	TA-W-18,021	Oil and gas production.
Kuykendall Electric Wireline, Inc. (workers)	Odessa, TX	9/8/86	9/4/86	TA-W-18,022	Pipe recovery, perforating, logging, etc, oil well service.
Kuykendall Electric Wireline, Inc. (workers)	Monahans, TX	9/8/86	9/4/86	TA-W-18,023	Pipe recovery, perforating, logging, etc, oil well service.
J.M. Huber (workers)	Houston, TX	9/3/86	8/26/86	TA-W-18,024	Metal removal oilfield equipment.
Pennzoil Company (workers)	Houston, TX	9/2/86	8/20/86	TA-W-18,025	Crude oil and oil products.
Tower Drilling Co. (workers)	North Glenn CO	9/2/86	8/27/86	TA-W-18,026	Oil and gas drilling.
Mobile Oil Corp. (workers)	San Ardo, CA	9/2/86	8/23/86	TA-W-18,027	Heavy crude oil.
Mobile Oil Corp. (workers)	Bakersfield, CA	9/2/86	8/23/86	TA-W-18,028	Heavy crude oil.
Mobile Oil Corp. (workers)	Ventura, CA	9/2/86	8/23/86	TA-W-18,029	Heavy crude oil.
Sanchez-O'Brien Oil & Gas Corp. (wkrs)	Laredo, TX	9/2/86	8/26/86	TA-W-18,030	Oil and natural gas production.
Southwestern Drilling Systems (Company)	Corpus Christi, TX	8/12/86	8/8/86	TA-W-18,031	Electrical wireline service.
BWAB, Inc. (workers)	Sidney, MT	8/8/86	8/4/86	TA-W-18,032	Crude oil and natural gas.
C&F Offshore (workers)	Freeport, TX	9/2/86	8/22/86	TA-W-18,033	Service for offshore oil rigs.
Houston Offshore Int'l Inc. (co)	Houston, TX	9/2/86	8/19/86	TA-W-18,034	Oil and gas exploration and drilling.
Teledyne Novible Offshore (wkrs)	New Iberia, LA	9/2/86	8/19/86	TA-W-18,035	Oil drilling.
The Reliable Specialty Co. (Company)	Corpus Christi, TX	9/2/86	8/28/86	TA-W-18,036	Sales of oilfield supply equipment.
L.B. Evans Sons Co. (workers)	Wakefield, MA	9/4/86	9/2/86	TA-W-18,037	Soft sole slippers.
Pacesetter Tool Div. of Western Co. of North America (wkrs).	Houston, TX	8/13/86	8/5/86	TA-W-18,038	Downhole oil tools.
Riley Drilling Co. (workers)	Big Spring, TX	8/18/86	7/16/86	TA-W-18,039	Oil drilling.
Veco Drilling, Inc. (workers)	Grand Junction, CO	8/9/86	8/1/86	TA-W-18,040	Oil drilling.
Safari Drilling Corp. (workers)	Abilene, TX	8/19/86	9/3/86	TA-W-18,041	Oil drilling.
Joy Industrial Equipment Co. (Workers)	Houston, TX	9/3/86	8/24/86	TA-W-18,042	Equipment for oil drilling rigs.
Wards Oilfield Service (Company)	Gladewater, TX	8/26/86	8/5/86	TA-W-18,043	Oil rig repair service.
F.W.A. Drilling Co., Inc. (Workers)	Midland, TX	8/20/86	8/14/86	TA-W-18,044	Contract oil drilling.
Manufactured Energy Products, Inc. (Company)	Fort Worth, TX	8/19/86	8/8/86	TA-W-18,045	Oil field trucks & skid units.
LEAMCO Services, Inc. (Workers)	Midland, TX	8/15/86	8/8/86	TA-W-18,046	Pump jack bearings.
Southwest Texas Services, Inc. (Workers)	Laredo, TX	8/26/86	8/22/86	TA-W-18,047	Pipeline construction services.
J&J Steel Supply, Co. (Workers)	Odessa, TX	8/13/86	8/8/86	TA-W-18,048	Oil storage tanks.
Falcon Refinery (Company)	Ingleside, TX	8/23/86	8/18/86	TA-W-18,049	Distillate fuels.
Flournoy Drilling Co. (Company)	Alice, TX	8/20/86	8/15/86	TA-W-18,050	Crude oil and gas.
ITT Barton Instruments Co. (Workers)	City of Industry, CA	8/25/86	7/18/86	TA-W-18,051	Oil and gas measurement instrumentation.
B&G Roustabout (Workers)	Williston, ND	7/31/86	7/28/86	TA-W-18,052	Oil field pump services.
N.L. Acme Tool (Workers)	Corpus Christi, TX	8/25/86	8/19/86	TA-W-18,053	Tool rentals.
N.L. Acme Tool (Workers)	Laredo, TX	8/25/86	8/19/86	TA-W-18,054	Tool rentals.
Pel Tex Oil Co. (Workers)	Houston, TX	8/18/86	7/30/86	TA-W-18,055	Exploration & production of crude oil.
Nevada Scout of Cedar Strat (Company)	Reno, NV	8/28/86	8/8/86	TA-W-18,056	Oil exploration.
Nevada Scout of Cedar Strat (Company)	Ely, NV	8/28/86	8/8/86	TA-W-18,057	Oil exploration geologists.
Cedar Strat (Company)	Reno, NV	8/28/86	8/8/86	TA-W-18,058	Oil exploration geologists.
Cedar Strat Labs (Company)	Ely, NV	8/28/86	8/8/86	TA-W-18,059	Oil exploration geologists.
Cedar Strat Supply (Company)	Ely, NV	8/28/86	8/8/86	TA-W-18,060	Oil exploration geologists.
Petro-Tex Drilling Co. (Workers)	Houston, TX	8/20/86	8/13/86	TA-W-18,061	Contract drilling.
Lufkin Industries, Inc. (TAMAW)	Lufkin, TX	8/29/86	8/25/86	TA-W-18,062	Oil field pumping units.

APPENDIX—Continued

Petitioner (Union/workers or former workers of:)	Location	Date received	Date of petition	Petition No.	Articles produced
AMF Tuboscope (Workers)	Corpus Christi, TX	8/29/86	8/26/86	TA-W-18,063	Oil pipe inspection.
Cities Service Oil & Gas Corp. (Workers)	Tulsa, OK	9/2/86	8/29/86	TA-W-18,064	Exploration & production of crude oil/gas.
W.B. Hinton Drilling Co., Inc. (Workers)	Mt. Pleasant, TX	9/2/86	8/22/86	TA-W-18,065	Oil and gas drilling.
Repcon, Inc. (Workers)	Corpus Christi, TX	8/25/86	8/20/86	TA-W-18,066	Overhaul and repair refinery.
Ensource, Inc. (Workers)	Denver, CO	7/31/86	7/15/86	TA-W-18,067	Produce oil and natural gas.
Drilling Measurements Inc. (Workers)	Corpus Christi, TX	8/12/86	8/7/86	TA-W-18,068	Oil well surveying.
Turner Tubular Service Inc. (Company)	Corpus Christi, TX	8/22/86	8/11/86	TA-W-18,069	Pipe finishing.
Shoreline Equipment Co. (Workers)	Odessa, TX	8/28/86	8/24/86	TA-W-18,070	Fabricate and assemble pumps.
Harkins & Company (Workers)	Alice, TX	8/25/86	8/18/86	TA-W-18,071	Crude oil and natural gas and drilling.
Republic Supply Co. (Workers)	Dickinson, ND	8/4/86	7/28/86	TA-W-18,072	Selling and servicing oil field equipment.
Republic Supply Co. (Workers)	Tioga, ND	8/4/86	7/28/86	TA-W-18,073	Selling and servicing oil field equipment.
S.S. White (Workers)	Holmdel, NJ	8/20/86	8/6/86	TA-W-18,074	Dental equipment.
Otis Engineering Corp. (Workers)	Corpus Christi, TX	8/15/86	8/6/86	TA-W-18,075	Variety of oil equipment; service, safety and completion.
Stage Drilling (Workers)	Corpus Christ, TX	8/25/86	8/14/86	TA-W-18,076	Oil drilling.
South Texas Drilling (Workers)	Pleasanton, TX	8/20/86	8/25/86	TA-W-18,077	Drilling & production of oil/gas.
Texas Drilling Co. (Workers)	Laredo, TX	8/13/86	8/8/86	TA-W-18,078	Drilling and exploration.
Zarsky Lumber Co. (Workers)	Laredo, TX	8/25/86	8/18/86	TA-W-18,079	Lumber and mud.
The Western Co. (Workers)	Rankin, TX	8/19/86	8/12/86	TA-W-18,080	Oil well services.
IMCO (Workers)	Laredo, TX	8/20/86	8/13/86	TA-W-18,081	Oil field chemicals.
Oil Field Service Co. of America (Workers)	Lafayette, LA	8/25/86	8/19/86	TA-W-18,082	Oil well fluids.
Oil Field Service Co. of America (Workers)	Houston, TX	8/25/86	8/19/86	TA-W-18,083	Oil well fluids.
Oil Well Service Co. (Workers)	Corpus Christi, TX	8/15/86	8/12/86	TA-W-18,084	Oil well services.
Reedy Mfg. & Repair Svc., Inc. (Workers)	Odessa, TX	8/6/86	7/31/86	TA-W-18,085	Oil field equipment.
J.R. Drilling (Workers)	Mt. Pleasant MI	8/15/86	7/13/86	TA-W-18,086	Crude oil.
South Texas Drilling & Explo. Co. (Workers)	San Antonio, TX	8/25/86	8/18/86	TA-W-18,087	Exploration & drilling.
Patterson Drilling Co. (Workers)	Snyder, TX	8/19/86	8/12/86	TA-W-18,088	Drilling oil wells.
C.A.C. Trucking, Inc. (Workers)	Friendswood, TX	7/31/86	7/11/86	TA-W-18,089	Material transport.
Channelton Industries, Inc. (UMWA)	Peytona, WV	8/27/86	8/21/86	TA-W-18,090	Coal.
WELEX, DIV. of Halliburton (Workers)	Alice, TX	8/26/86	8/21/86	TA-W-18,091	Oil field services.
Reed Tool Co. (USWA)	Houston, TX	8/18/86	8/6/86	TA-W-18,092	Drill bits.
Zapata Offshore Co. (Workers)	Houston, TX	8/27/86	8/20/86	TA-W-18,093	Offshore oil well drilling.
State Boat (Workers)	Houston, TX	8/26/86	8/25/86	TA-W-18,094	Oil rig services.
Lower Coast Perforators, Inc. (Workers)	Corpus Christ, TX	8/25/86	8/19/86	TA-W-18,095	Perforation of oil/gas wells.
Axelson, Inc. (Company)	Longview, TX	8/25/86	8/19/86	TA-W-18,096	Oil field production equipment.
Advance Consultants Corp. (Workers)	Midland, TX	8/21/86	8/18/86	TA-W-18,097	Mud logging.
Hite Operating Co., Inc. (Workers)	Evansville, IL	8/25/86	7/14/86	TA-W-18,098	Crude oil.
Padre Drilling (Workers)	Corpus Christ, TX	8/11/86	8/6/86	TA-W-18,099	Oil well drilling.
Halliburton Services (workers)	Tioga, ND	8/8/86	8/4/86	TA-W-18,100	Oil Drilling.
Halliburton Services (workers)	Alice, TX	8/15/86	8/12/86	TA-W-18,101	Oil well services.
Merritt Trucking Co., Inc. (workers)	Snyder, TX	8/12/86	7/28/86	TA-W-18,102	Transporting oil rig drilling equipment.
Dresser Atlas (workers)	Odessa, TX	8/25/86	8/20/86	TA-W-18,103	Mapping of oil wells.
Dailey Oil Tools, Inc. (workers)	Corpus Christi, TX	9/2/86	8/30/86	TA-W-18,104	Mechanical drilling jars.
Offshore Casing & Hammers, Inc. (workers)	Corpus Christi, TX	8/29/86	8/25/86	TA-W-18,105	Oil well service.
Karl F. Edmonds, Inc. (workers)	Laredo, TX	8/15/86	8/11/86	TA-W-18,106	Oil well services.
Karl F. Edmonds, Inc. (workers)	Kilgore, TX	8/15/86	8/11/86	TA-W-18,107	Oil well services.
N.L. Baroid Industries (workers)	Laredo, TX	8/21/86	8/13/86	TA-W-18,108	Drilling mud and drilling fluids.
N.L. Baroid Industries (workers)	Bay City, TX	8/21/86	8/13/86	TA-W-18,109	Drilling mud and drilling fluids.
Loffland Bros. Co. Central Div. (workers)	New Braunfels, TX	8/15/86	8/11/86	TA-W-18,110	Oil drilling.
Trident Drilling Completion & Service (workers)	Olney, IL	8/18/86	8/12/86	TA-W-18,111	Hydrocarbons.
Triple B Oil Producers (workers)	Olney, IL	8/18/86	8/12/86	TA-W-18,112	Hydrocarbons.
Stellum Oil Field Supply (workers)	Olney, IL	8/18/86	8/12/86	TA-W-18,113	Hydrocarbons.
Empire State Product (workers)	New York, NY	8/27/86	8/25/86	TA-W-18,114	Metal buckles.
Conoco, Inc. (workers)	Lakewood, CO	6/27/86	6/18/86	TA-W-18,115	Refines and sells crude oil.
Conoco, Inc. (workers)	Midland, TX	6/27/86	6/18/86	TA-W-18,116	Refines and sells crude oil.
Conoco, Inc. (workers)	Lafayette, LA	6/27/86	6/18/86	TA-W-18,117	Refines and sells crude oil.
Conoco, Inc. (workers)	New Orleans, LA	6/27/86	6/18/86	TA-W-18,118	Refines and sells crude oil.
D & S Industries (workers)	Carthage, TX	9/2/86	8/13/86	TA-W-18,119	Oil filed service.
H.W. Lemens, Inc. (workers)	Abilene, TX	7/28/86	7/15/86	TA-W-18,120	Sold oil and diesel.
Guilford Industries (workers)	E. Douglas, MA	9/9/86	9/4/86	TA-W-18,121	Poly wall coverings.

[FR Doc. 86-21772 Filed 9-25-86; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-17,335]

American Smelting and Refining Co., Mascot, TN; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 14, 1986 in response to a worker petition received on April 9, 1986 which was filed by the International Chemical Workers Union on behalf of workers at several locations of Americal Smelting and Refining Company, Mascot, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 19th day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-21853 Filed 9-25-86; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-17,139]

American Standard Inc. Switch & Signal Division, Swissvale, PA; Negative Determination Regarding Application for Reconsideration

By an application dated September 2, 1986, the United Electrical Workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at American Standard, Inc., Switch, & Signal Division, Swissvale, Pennsylvania. The denial notice was published in the **Federal Register** on August 26, 1986 (51 FR 30446).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that foreign companies have adversely affected production and sales at the Swissvale plant. It is also claimed that production originally performed at Swissvale is now being produced in Canada and in Italy.

The Department conducted a survey of the firm's customers to determine whether increased imports of signaling and hardware equipment for rail and transit systems contributed importantly to declines in productiion and sales and to worker separations. The Department's survey of customers purchasing equipment from Union Switch on a recurring basis showed that none of the respondents imported signaling or hardware equipment in 1984, 1985 or in the first quarter of 1986. A survey was also conducted with customers that represented unsuccessful bids by Union Switch for large projects requiring signaling systems and hardware. The survey revealed that none of the lost bids were awarded to foreign competitors or involved foreign production.

The company statement supplied by the union did not indicate that Union Switch is importing products originally produced at Swissvale or that its customers of signalling and hardware equipment have actually increased their import purchases at the expense of Swissvale.

Finally, the union alleges that Union Switch imports from operating plants in Canada and Italy. Company officials have responded that although Union Switch has operating facilities in foreign countries, none of the foreign production has entered the U.S.

The foreign plants are used to complete projects for foreign markets. Having physical locations in foreign countries allows Union Switch to satisfy the "content requirements" of its export market.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or the facts which would jusitify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied. Signed at Washington, DC, this 11th day of September 1986.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-21854 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter No. 50-86; Republication

Unemployment Insurance Program Letter No. 50-86, which informs State agencies of amendments to unemployment benefit programs in the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, was published in the **Federal Register** together with three other program letters on August 20, 1986, at 51 FR. 29713, 29719. Several pages of UIPL 50-86 were omitted from the document and thus were not included in the August 20 publication. Therefore, the full text of UIPL 50-86 and attachments is republished below; this supercedes the August 20 publication of this UIPL, except for the preamble to that publication.

Dated: September 19, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 50-86

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management

Date: July 21, 1986.

Subject: Amendments Made by Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985. Which Affect the Federal-State Unemployment Compensation Program

1. *Purpose.* To advise State agencies of the amendments made by Public Law (Pub. L.) 99-272 to section 303 of the Social Security Act (SSA), sections 3304 and 3306 of the Federal Unemployment Tax Act (FUTA), and the Federal Supplemental Compensation Act of 1982 (FSC).

2. *References.* Sections 12401, 12402, and 13303 of Pub. L. 99-272.

3. *Background.* The President signed into law on April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272. The amendments made by Pub. L. 99-272 have made several significant changes affecting the unemployment compensation (UC) program which may require changes in State law and will require new agreements with the U.S. Secretary of Labor.

Section 12401 amends section 303(a)(5), SSA, and sections 3304(a)(4) and 3306(f), FUTA, to permit recovery of overpayments made under State and Federal UC laws through offset from unemployment benefits payable to an individual under another State's UC law or a Federal UC program in accordance with a new subsection (g) to section 303, SSA, which provides that:

(1) A State may deduct overpayments from benefits payable under a UC program of the United States (U.S.) or another State, with the same procedural safeguards for notice and opportunity for a hearing as apply to the deduction of overpayments of UC paid by the State: and

(2) Any State may enter into an agreement with the Secretary of Labor where the State agrees to recover overpayments made under a UC program of the U.S. from benefits payable under the State's UC program, and the U.S. agrees to allow the State to recover overpayments made under a State UC program from benefits payable under a UC program of the U.S. The reciprocal nature of these parallel provisions is the essence of any such agreement.

These amendments may apply to recoveries made on or after the date of enactment, April 7, 1986, and may apply to overpayments made before, on, or after the date of enactment.

Section 12402 amends FSC by waiving the consecutive weeks requirement for certain individuals to collect the remaining benefits in their FSC accounts under Pub. L. 99-15, if these individuals were called up for National Guard duty by the Governor in a disaster declared by the President on June 3, 1985. This provision applies only to Pennsylvania and Ohio.

Section 13001 through 130009 reauthorize the Trade Adjustment Assistance (TAA) Program for workers effective December 18, 1985, and extend the program to September 30, 1991. These sections also make substantial changes to the TAA Program. A separate directive (GAL 7-86) discusses these changes.

Section 13303 amends the FUTA definition of "employment" for three groups of workers. This section:

(a) Extends for two years, until December 31, 1987, the exemption from "employment" under section 3306(c)(1)(B), FUTA, of agricultural labor performed by certain nonresident farmworkers admitted to work

temporarily under specific provisions of the Immigration and Nationality Act.

(b) *Permanently* exempts from "employment" under section 3306(c)(20), FUTA, remuneration paid after September 19, 1985 for services performed by certain full-time students employed by certain summer camps. Notice that this exemption was not applicable from January 1, 1984 to September 19, 1985.

(c) *Permanently* extends the exclusion from "employment" under section 3306(c)(18), FUTA, remuneration paid after December 31, 1980, for services performed by crews of certain fishing boats.

4. *Action Required.* SESAs are requested to notify appropriate staff of these amendments.

5. *Inquires.* Inquires should be directed to your regional office.

6. *Attachments.* Text, explanation and interpretation of UC amendments; and draft language to implement the provisions of new section 303(g), SSA.

Text, Explanation and Interpretation of UC Amendments Made by Pub. L. 99-272

[Attachment I to UIPL No. 50-86]

I. Section 12401. Recovery of Overpayment by a State Under the State's UC Program, a Federal UC Program or a UC Program of Another State

A. *Text of Amendments.*

1. *Amendment to section 303(a)(5), SSA:*

Provided further, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g).

2. *New Subsection (g) of section 303, SSA:*

(g)(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which—

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, "unemployment benefits" means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

3. *Companion Amendment to section 3304(a)(4), FUTA:*

(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act.

4. *Companion Amendment to section 3306(f), FUTA:*

(3) amounts may be deducted from unemployment benefits and used to repay ovepayments as provided in section 303(g) of the Social Security Act.

B. *Discussion.* Section 12401 of COBRA amends the law to allow withholding of UC to recover overpayments among the various State and Federal UC programs. States are permitted to withhold benefits payable under the State UC programs to recover overpayments of benefits made to an individual by other States and under any Federal UC programs. In addition, an overpayment of State benefits may be recovered from Federal UC programs if the State has entered into a reciprocal agreement under which it will recover overpayments of Federal UC benefits from State UC benefits. Formal written agreements between the State and the Secretary of Labor are required to implement the offset of benefits among the Federal and State UC programs. Implementation of these provisions is optional for each State.

Section 12401 allows three types of offset under the new subsection (g) of section 303, SSA. The three types are defined below:

1. *Interstate Offset* means:

a. The withholding of State UC benefits payable by State A to recover an overpayment made by State B under its State UC program, and

b. The withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program.

2. *Intrastate Cross-Program Offset* means:

a. The withholding of State UC benefits payable by State A to recover an overpayment made by State A under a Federal UC program, and

b. The withholding of Federal UC benefits payable by State A to recover an overpayment made by State A under its State UC program.

Note that the authority for withholding of UC benefits under one Federal program payable by State A to recover an overpayment made by State A under the same or a different Federal program continues in effect under previously existing statutory authority.

3. *Interstate Cross-Program Offset* means;

a. The withholding of State UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program, and

b. The withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under its State UC program.

Procedures, requirements and guidance for the implementation of these three types of offsets are discussed further in this Attachment.

Federal benefit programs covered by this amendment are UCFE, UCX, TAA, DUA, REPP, FSC, and any future UC programs, and will be specifically listed in the written agreements.

The collection of TAA non-fraud overpayments cannot be made until waiver guidelines are published in final regulations to satisfy the court order (Civil Action No. 82-3137) issued on January 17, 1983, by the U.S. District Court for the District of Columbia. These regulations containing the waiver guidelines have not been published so TAA non-fraud overpayments cannot at this time be recouped by offset or any other means. However, the court order does not prevent States from using TAA payments to offset overpayments made under other State and Federal UC programs. Appropriate instructions will be issued after final TAA regulations are published.

C. *Implementation of section 303(g)(1), SSA.*

1. *Review of State Law.* If a State elects to implement this new subsection, it should review its UC law to see if these deductions are allowable. If a legislative change is needed, recommended draft language is contained in Attachment II.

2. *Procedural Safeguards.* This new subsection of SSA requires that any offset of an overpayment "shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing" as required by a State for the recovery of regular UC payments.

a. *Requesting State.* Before a State may request recoupment, a recoverable overpayment determination must have been issued, in accordance with the Secretary of Labor's *Standard for Claims Determination, E.S. Manual,* Part V, sections 6010–6015. The State must notify the recovering State, in writing, of its request for recoupment and certify the balance of outstanding overpayment and should notify the claimant of this request. Although not required, it is recommended that the requesting State periodically notify the claimant as to the amount of the overpayment which has been recouped and the balance remaining.

b. *Recovering State.* The recovering State must follow the same procedures relating to notice to the claimant and opportunity for a hearing as apply under its own State law for the recovery of overpayments of regular UC paid by the recovering State.

3. *Guidance for Interstate Offset.* This new subsection applies to the offset of any overpayment not previously recovered under the requesting State's law. The State receiving the request for recoupment must apply its own law in offsetting an overpayment to the same extent as provided for the same type (fraud or nonfraud) of intrastate overpayment.

a. *Interstate Reciprocal Overpayment Recovery Arrangement.* The ICESA Interstate Benefit (IB) Committee has under consideration a reciprocal arrangement. This Arrangement will facilitate implementation of interstate overpayment recovery.

b. *Interstate Request for Recoupment.* A form to be used by the requesting State has been drafted and is before the IB Committee for approval. Once issued this form should be used by all States.

c. *Notice of Recoupment.* Recovering States should individually develop a notice that must include at a minimum the following information:

(1) The statutory authority for the offset and the name of the State requesting recoupment;

(2) The amount of outstanding balance certified by the requesting State;

(3) The date of the original notice of determination of overpayment;

(4) Type of overpayment (fraud or nonfraud);

(5) Program type (UI, UCFE, UCX, etc.);

(6) The amount to be offset weekly; and

(7) The right to request redetermination and appeal.

Claimant's right of appeal should be limited to the recovering State's authority to offset and the amount of the weekly offset. Claimants should be informed that any issue concerning the correctness or validity of the requesting State's overpayment determination should be addressed to the requesting State.

d. *Interstate Overpayment Recovery Handbook.* States should review and update the information provided in the Handbook as appropriate.

Additional information concerning interstate recoupment will be provided after further consultation with the IB Committee.

D. *Implementation of section 303(g)(2), SSA.*

1. *Requirement for Cross-Program Offset of Benefits.* Section 303(g)(2) sets the conditions for implementing the intrastate and interstate cross-program offset. Section 303(g)(2) requires each State which elects to implement the cross-program offset to enter into a reciprocal agreement with the Secretary of Labor. Under such agreement the State agrees to recover overpayments made under a UC program of the U.S., which is administered by the State under an agreement with the Secretary of Labor, from benefits payable under the State UC program. The U.S. agrees to allow the State to recover overpayments made under a State UC program from benefits payable under a UC program of the U.S., which is administered by the State under an agreement with the Secretary of Labor. The agreement will also permit the State to implement the interstate cross-program offset if it is participating in the section 303(g)(1) program.

As with the implementation of section 303(g)(1) a State should review the UC law to determine if such cross-program offsets are authorized by its law. The draft language recommended in Attachment II would also allow intrastate and interstate cross-program offset of unemployment benefits to be made if a State enters into a reciprocal agreement with the Secretary of Labor and participate in the section 303(g)(1) program.

2. *Agreements.* ETA is preparing agreements to implement section 303(g)(2), SSA. Two copies of the agreement will be sent to the Governor of each State. If a State wishes to enter into this reciprocal agreement for the recovery of overpayments, both copies should be signed by the Governor or other State official on behalf of the State. One copy should be retained by the State, and the other copy returned to the Unemployment Insurance Service, Attention: Carolyn M. Golding, Director.

3. *Allowable Deductions under Agreements.* If a State enters into a reciprocal agreement with the Secretary of Labor, it may deduct from Federal unemployment benefits an overpayment previously made to the claimant under the State's UC program. The State also agrees to deduct from regular, extended, and additional UC benefits an overpayment previously made to the claimant under a Federal unemployment benefit program. The Federal benefits applicable under a 303(g)(2) agreement will be listed in the agreement.

This new subsection also permits interstate cross-program offset, but only if the two States involved have a section 303(g)(2) agreement with the Secretary of Labor and participate in the 303(g)(1) program.

4. *Priorities of Overpayments.* When a State receives a request for recoupment from more than one State, it is recommended that, after any intrastate overpayments have been satisfied, the oldest overpayment determination be given first priority. This, however, does not apply when there is an overpayment outstanding in a transferring State participating in a Combined-Wage Claim, since 20 CFR 616.8(e) gives priority to a transferring State when overpayments are recovered through a Combined-Wage Claim.

E. *Action Required.* The States are encouraged to implement the provisions of this new section of SSA. These procedures allow the States a viable method for recoupment of overpayments that might not otherwise be collected.

F. *Effective Date.* Section 303(g), SSA, is effective for recoveries made on or after April 7, 1986, and may apply with respect to overpayments made before, on, or after such date.

II. Section 12402. Supplemental Unemployment Compensation for Certain Individuals

A. Text of Provision

(a) In General.—If—

(1) an individual was receiving Federal supplemental compensation for the week which includes March 31, 1985, or a series of consecutive weeks which began with such week, and

(2) such individual did not meet the consecutive-week eligibility requirements of the Federal Supplemental Compensation Act of 1982 during any period of 1 or more subsequent weeks by reason of performing temporary disaster services described in subsection (e), weeks in

such period shall be disregarded for purposes of the consecutive-week requirement of section 602(f)(2)(B) of such Act, and, notwithstanding the requirements of State law relating to the availability for work, the active search for work, or the refusal to accept work, such individual shall be entitled to payment of Federal supplemental compensation for each week of unemployment which is described in subsection (b) and for which a certification of unemployment is made by such individual in accordance with subsection (c).

(b) Weeks for which payment shall be made.—A week of unemployment for which payment shall be made under subsection (a) is a week which occurred during the period which commences with the first week beginning after the close of the period described in subsection (a)(2) and ends with the beginning of the first week in which the individual was employed after the close of such period.

(c) Certification.—The certification of unemployment referred to in subsection (a) shall be a certification—

(1) That is made on a form provided by the State agency concerned and signed by the individual; and

(2) That identifies the weeks of unemployment for which the individual is making the certification.

(d) Limitation on Amount of Payment.—In no case may the total amount paid to an individual under subsection (a) exceed the amount remaining in the account established for such individual under section 602(e) of the Federal Supplemental Compensation Act of 1982 after payments were made from such account for weeks of unemployment beginning before the period described in subsection (a)(2).

(e) Definition.—For purposes of subsection (a), the term "temporary disaster services" means services performed as a member of the National Guard after being called up by the Governor of a State to perform services related to a major disaster that was declared on June 3, 1985, by the President of the United States under the Disaster Relief Act of 1974.

(f) Modification of Agreement.—(1) The Secretary of Labor shall, at the earliest possible date after the date of the enactment of this Act, propose to any State concerned a modification of the agreement that the Secretary has with such State under section 602 of the Federal Supplemental Compensation Act of 1982 in order to carry out this section.

(2) Pending modification of the agreement, the State may make payment in accordance with the provisions of this section and shall be reimbursed in accordance with the provisions of section 604(a) of the Federal Supplemental Compensation Act of 1982. For purposes of carrying out this paragraph, the term "this subtitle" in such section 604(a) shall include this section.

(g) Effective Date.—The provisions of this section shall apply to weeks beginning after March 31, 1985.

B. *Discussion.* The FSC program was due to expire April 6, 1985. Pub. L. 99–15, enacted April 4, 1985, allowed individuals receiving FSC for the week which included March 31, 1985, to continue receiving the remainder of their benefits, as long as these remaining benefits were collected in consecutive weeks of unemployment. Any interruption of benefits, for whatever reason, ended the FSC benefits.

Section 12402 allows certain individuals in the States of Pennsylvania and Ohio to collect the balance in their FSC account, notwithstanding Pub. L. 99–15. This section pertains only to a class of individuals who were on National Guard duty during a major disaster declared by the President on June 3, 1985. There are specific provisions as to who is eligible and as to the conditions for payment of any remaining FSC.

C. *Procedures for FSC Payments (Ohio and Pennsylvania).*

1. *Eligibility for FSC for Weeks Beginning After March 31, 1985.* Pub. L. 99–272 provides for payment of FSC to individuals whose FSC benefit payments were terminated because their FSC claims series were interrupted by their service in the National Guard. It pertains only to individuals who received FSC payments for the weeks which included March 31, 1985, and subsequent, consecutive weeks, until they were called up for duty in the National Guard by their Governor during a major disaster declared by the President on June 3, 1985. This amendment to the FSC Act of 1982 concerns only the States of Ohio and Pennsylvania.

2. *Modification to Agreements.* Pub. L. 99–272 requires a modification of the agreement made under section 602 of the FSC Act. However, pending modification of this agreement, the two States may make FSC payments to eligible individuals and will be reimbursed under section 604(a) of the FSC Act of 1982.

3. *Notice to Claimants.* The SESA shall identify the FSC claimants affected by the call up of the National Guard and inform each of them in writing that they may be eligible for FSC payments. It is recommended that the States identify the affected claimants by obtaining from the National Guard a list of the Social Security account numbers of the individuals who served during the disaster and crossmatch this list with the FSC claim files.

4. *Limits on FSC Payments.* SESAs shall pay FSC to eligible claimants to the extent of the balances in their FSC accounts when their claims were terminated. The FSC payments may be made for weeks of unemployment which begin the first week beginning after the end of the individual's National Guard service during the major disaster declared on June 3, 1985. A claimant's FSC payments for weeks of unemployment end with the beginning of the first week in which the individual was employed after the end of National Guard service. This means that no FSC payments may be made to any individual for any week of *partial* unemployment. For each week of FSC claimed, the individuals shall indicate the week ending date of the week of unemployment claimed and certify to their unemployment for each such week by signing forms provided by the State agency.

5. *Special Eligibility Rule.* Individuals' eligibility for FSC during the period which begins with the first week of unemployment following their National Guard service shall not be limited, reduced, or terminated because of issues regarding State law requirements for active search for work, availability for work or refusals to accept or apply for offers of work.

6. *Reporting Procedures.* FSC activity may be reported in the comments section of the appropriate report.

7. *Reductions—Pub. L. 99–177.* The FSC payments and administrative costs to implement Pub. L. 99–272 are not subject to reduction under title II of Pub. L. 99–177.

D. *Action Required.* This section applies only to the States of Pennsylvania and Ohio.

E. *Effective Date.* This provision shall apply to weeks beginning after March 31, 1985.

III. Section 13303(a). Extension of the FUTA Exemption of Certain Alien Farmworkers

A. *Text of Amended Paragraph of section 3306(c)(1)(B):*

(B) such labor is not agricultural labor performed before *January 1, 1988,* by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

B. *Discussion.* This provision amends section 3306(c)(1)(B), FUTA, by extending for two years, until December 31, 1987, the FUTA exemption from coverage of farmworkers who are aliens temporarily admitted to the United States to work in agricultural employment pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

Prior to the amendments made by section 4 of Pub. L. 96–84, effective January 1, 1980, service performed by an alien referred to in section 3306(c)(1)(B), FUTA, was not required to be covered or taken into account in determining the size of a firm under section 3306(c)(1)(A) (i) and (ii), FUTA. Subsequent amendments by Congress extended until December 31, 1985, the exemption from coverage of agricultural work under section 3306(c)(1)(B), FUTA, but required consideration of such service in determining the size of a firm.

Section 13303(a) of Pub. L. 99–272 further extends the exemption from coverage of services performed by aliens in agricultural labor until December 31, 1987. It continues to require consideration of such service in determining the size of a firm under section 3306(c)(1)(A) (i) and (ii), FUTA.

Since the Internal Revenue Service has the primary authority for administration of this provision, it will have the responsibility for interpreting and applying the language of this provision.

C. *Action Required.* States have the option of providing a similar exclusion in State law. It is not a Federal requirement for conformity.

D. *Effective Date.* This amendment to FUTA became effective upon enactment, April 7, 1986.

IV. Section 13303(b). Reinstatement of the FUTA Exemption of Full-Time Students Employed by Summer Camps

A. *Text of Reinstated Paragraph of section 3306(c)(20):*

(20) Service performed by a full-time student (as defined in subsection (q)) in the employ of an organized camp—

(A) If such camp—

(i) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) Had average gross receipts for any 6 months in the preceding calendar year which were not more that 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) If such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year.

B. *Discussion.* Section 276(b) of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 added a new paragraph (20) to Section 3306(c), FUTA, to be applicable to remuneration paid during calendar year 1983 only. Section 13303(b) now amends TEFRA so that Section 3306(c)(20), FUTA, is applicable to remuneration paid after September 19, 1985.

Under section 3306(c)(20), FUTA, the service of a full-time student (see definition below) who is paid wages for less than 13 calendar weeks after September 19, 1985, in the employ of an organized camp (see definition below) is excluded from coverage under FUTA.

This exclusion applies only to "full-time students" in the employ of an "organized camp" who work "less than 13 calendar weeks." All three conditions must be met for such services to be excluded from coverage under FUTA.

1. "Full-Time Student" is defined by section 3306(q), FUTA:

(q) Full-Time Student.—For purposes of subsection (c)(20), an individual shall be treated as a full-time student for any period—

(1) During which the individual is enrolled as a full-time student at an educational institution, or

(2) Which is between academic years or terms if—

(A) The individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term, and

(B) There is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

Under this definition, an individual is considered to be a "full-time student" for any period during which the individual is enrolled as a full-time student at an educational institution. Also, an individual is considered to be a "full-time student" between academic years or terms (e.g. summer recess) if the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term, and there is a reasonable assurance that the individual will return to an educational institution at the beginning of the next academic year or term as a full-time student.

2. "Organized Camp" must meet one of the following requirements contained in section 3306(c)(20):

(a) Does not operate more than 7 months in the calendar year and did not operate more than 7 months in the preceding calendar year, or

(b) Had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year.

3. "Less than 13 calendar weeks" means employment in 12 calendar weeks or less. Therefore, a full-time student who worked in the employ of an organized camp in 12 calendar weeks and any additional day(s) beyond that 12 calendar week into a 13th calendar week would not be excluded from FUTA coverage under section 3306(c)(20).

Since the Internal Revenue Service has the primary authority for administration of this provision, it will have the responsibility for interpreting and applying the language of this provision.

C. *Action Required.* A State has the option of whether to seek an amendment to State law to provide for a similar exclusion in its law. It is not a Federal requirement for conformity.

D. *Effective Date.* This amendment to FUTA became effective upon enactment April 7, 1986.

V. Section 13303(c). Permanent Extension of the FUTA Exemption of Certain Services on Fishing Boats

A. *Text of Extended Paragraph of Section 3306(c)(18):*

(18) service described in section 3121(b)(20):

B. *Discussion.* This provision permanently extends section 3306(c)(18), FUTA, by excluding from "employment" certain services on fishing boats as described in section 3121(b)(20) of the Internal Revenue Code (IRC) of 1954.

Section 3121(b)(20) of the IRC (as amended by Section 13303(c)(2)) excludes from employment covered by the Federal Insurance Contributions Act:

(20) Service (other than service described in paragraph (3)(A)) performed by an indivdual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) Such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

(B) Such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) The amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat (or each boat from which the individual receives

a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

Since the Internal Revenue Service has the primary authority for administration of this provision, it will hve the responsibility for interpreting and applying the language of this provision.

C. *Action Required.* A State has the option of whether to seek an amendment to State law to provide for a similar exclusion in its law. It is not a Federal requirement for conformity.

D. *Effective Date.* This amendment to FUTA became effective upon enactment, April 7, 1986.

Attachment II to UIPL No. 50-86—Recommended Draft Language to Implement Section 303(g)

The recommended draft language is keyed to the *Manual of State Employment Security Legislation, Revised September 1950* and later supplementals. It adds a new subsection (f) to section 15.

(Alternative 1)

(f) Notwithstanding and other provision of this chapter, the commissioner may recover an overpayment of benefits paid to any individual under this State or another State law or under an unemployment benefit program of the United States.

(Alternative 2)

(f) *Interstate and cross-offset of State and Federal unemployment benefits.*— To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies or other States of the United States Secretary of Labor, or both, whereby, notwithstanding the provisions of subsections (j), (k), or (l) of section 5:

(1) Overpayments of unemployment benefits as determined under section 5(j) shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another State, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other State shall be recovered by offset from unemployment benefits otherwise payable under this Act;

(2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Act or any such federal program, or under the unemployment compensation law of another State or any such federal unemployment benefit or allowance program administered by such other State under an agreement with the United States Secretary of Labor if such other State has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under section 5(j), and overpayments as determined under the unemployment compensation law of another State which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other State under an agreement with the United States Secretary of Labor.

[FR Doc. 86-21779 Filed 9-25-86; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-16,362]

B.F. Goodrich Co., Akron, OH; Adjustment Assistance Amended Revised Determinations

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Notice of Determinations Regarding Eligiblity to Apply for Worker Adjustment Assistance on March 7, 1986. The Notice of Determinations was published in the Federal Register on March 18, 1986 (51 FR 9290).

The United States Rubber Workers subsequently filed an application for reconsideration with the Department asking that workers producing rubber bands and farm service tires at the Akron plant be added to the certification. The Department issued a Notice of Revised Determinations on Reconsideration on July 15, 1986 and published it in the Federal Register on July 25, 1986 (51 FR 26770). The Revised Notice added workers engaged in employment related to the production of farm service tires who became totally or partially separated from employment on or after July 1, 1985 as eligible to apply for adjustment assistance. The Notice denied workers engaged in the production of rubber bands and tank liners.

According to information furnished by the company, workers producing farm service tires were not separately identifiable from workers producing other tires. The company reported that the producting of farm service tires ceased in September, 1985.

The purpose of this notice is to provide a termination date for workers producing tires.

The amended notice applicable to TA-W-16,362 is hereby issued as follows:

All workers of Plant #1 of B.F. Goodrich Company, Akron, Ohio engaged in employment related to the production of conveyor belts who become totally or partially separated from employment on or after December 1, 1984 and all workers engaged in employment related to the production of tires who became totally or partially separated from employment on or after July 1, 1985 and before September 15, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of the Akron, Ohio plant of B.F. Goodrich Company engaged in the production of sheet rubber, rubber bands, and tank liners are denied eligiblity to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of September 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-21777 Filed 9-25-86; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-17,081]

Cal-Crest Outerwear, Inc., Murphysboro, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 4, 1986 applicable to all workers of Cal-Crest Outerwear, Incorporated, Murphysboro, Illinois.

Based on additional information furnished by the Amalgamated Clothing and Textile Workers Union and confirmed by the company on worker separations prior to the October 11, 1985 impact date, the Department is amending the certification by

establishing a new impact date of May 17, 1985.

The intent of the certification is to cover all workers at Cal-Crest Outerwear, Inc., Murphysboro, Illinois whose separations were linked to increased imports of men's and boys' outerjackets.

The amended notice applicable to TA-W-17,081 is hereby issued as follows:

All workers of Cal-Crest Outerwear, Incorporated, Murphysboro, Illinois who became totally or partially separated from employment on or after May 17, 1985 and before December 11, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of September 1986.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-21776 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration Wage and Hour-Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determines to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and

29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitle "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Deaprtment. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:
- District of Columbia: DC86-1 (Jan. 3, 1986). p. 80, pp. 83-84.
- New York:
  - NY86-3 (Jan. 3, 1986)..... p. 661.
  - NY86-9 (Jan. 3, 1986)..... p. 723.
- Rhode Island RI86-1 (Jan. 3, 1986). pp. 965-969 pp. 969a-969b.

Volume II:
- Kansas: KS86-9 (Jan. 3, 1986). p. 342.
- Oklahoma: OK86-14 (Jan. 3, 1986). p. 831.
- Wisconsin: WI86-11 (Jan. 3, 1986). p. 999.

Volume III:
- California: CA86-2 (Jan. 3, 1986). p. 44-59.
- Colorado: CO86-1 (Jan. 3, 1986). p. 97.
- Nevada: NV86-2 (Jan. 3, 1986). pp. 236-237 p. 239.
- Nevada: NV86-4 (Jan. 3, 1986). pp. 247-255.
- Oregon: OR86-1 (Jan. 3, 1986). pp. 258, 263 p. 266.
- Washington: WA86-1 (Jan. 3, 1986). pp. 300-302 pp. 310, 312.
- Washington:
  - WA86-1 (Jan. 3, 1986)..... pp. 300-302, pp. 310, 312
  - WA86-2 (Jan. 3, 1986)..... pp. 329-330, p. 333.
  - WA86-3 (Jan. 3, 1986)..... pp. 339, 342.
  - WA86-5 (Jan. 3, 1986)..... pp. 356, 358.
  - WA86-6 (Jan. 3, 1986)..... p. 360.
  - WA86-7 (Jan. 3, 1986)..... p. 362.
  - WA86-8 (Jan. 3, 1986)..... pp. 365b, 365d.
  - WA86-9 (Jan. 3, 1986)..... pp. 365f, 365i.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Govenment Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost

is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Though out the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 19th day of September 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-21637 Filed 9-25-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL CREDIT UNION ADMINISTRATION

Performance Review Board Appointment

AGENCY: National Credit Union Administration.

ACTION: Notice of appointment to Performance Review Board.

SUMMARY: Notice is hereby given of an additional member of the Performance Review Board.

DATES: Effective October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dorothy W. Foster, Director, Personnel Office, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456; Telephone (202) 357-1156.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Elizabeth F. Burkhart, Chairwoman;
2. H. Allen Carver, Member;
3. Robert M. Fenner, Member; and
4. D. Michael Riley, Alternate.

Dated: September 17, 1986.

Roger W. Jepsen,

Chairman.

[FR Doc. 86-21801 Filed 9-25-86; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co., Zion Nuclear Power Station; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for the Commonwealth Edison Company's Zion Nuclear Power Station from the Zion-Benton Public Library, Zion, to the Waukegan Public Library, Waukegan, Illinois.

Members of the public may now inspect and copy documents and correspondence related the licensing and operation of the Zion Nuclear Power Station at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. The library is open on the following schedule: Monday through Thursday 9 a.m. to 9 p.m. and Friday and Saturday 9 a.m. to 5 p.m. The Library is open on Sunday from 1 p.m. to 5 p.m. Labor Day to Memorial Day.

For further information, interested parties in the Waukegan area may contact the LPDR directly through Mrs. Joan Wilts, telephone number (312) 623-2041. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 1717 H Street, NW., Washington, DC 20555, telephone number (202) 634-3273.

Questions concerning the NRC's local public document room program or the availability of documents at the Zion LPDR should be addressed to Ms. Joan L. Souder, Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638-8081 toll-free.

Dated at Bethesda, Maryland, this 23rd day of September, 1986.

For The Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 86-21866 Filed 9-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-369; License No. NPF-9 EA 86-52]

Duke Power Company, (McGuire Unit 1); Order Imposing Civil Monetary Penalty

I

Duke Power Company (the Licensee) is the holder of Operating License No. NPF-9 (the license) issued by the Nuclear Regulatory Commission (the Commission/NRC) on January 23, 1981. The license authorizes the licensee to operate McGuire Unit 1 in accordance with conditions specified therein.

II

A safety inspection of the licensee's activities under the license was conducted by the NRC from January 6-February 28, 1986. As a result of this inspection, it appeared that the licensee had not conducted its activities in full compliance with NRC requirements. A Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated June 2, 1986. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice by letters dated July 2 and 22, 1986.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, at the above address. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. Upon failure of

the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 19th day of September 1986.

For The Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix

On June 2, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation of an NRC requirement. Duke Power Company's responses to the Notice were provided in letters dated July 2 and 22 1986. A restatement of the violation, a summary of the licensee's responses, the NRC staff's evaluation of the licensee's responses, and the staff's conclusions are set forth below.

Restatement of the Violation

Technical Specification 3.5.2 requires for Modes 1, 2, and 3 that two independent emergency core cooling system (ECCS) subsystems shall be operable with each subsystem comprised of one operable centrifugal charging pump, one operable safety injection (SI) pump, one operable RHR heat exchanger, one operable RHR pump, and an operable flow path capable of taking suction from the refueling water storage tank (RWST) on a safety injection signal and automatically transferring suction to the containment sump during the recirculation phase of operation.

With both ECCS subsystems flowpaths inoperable, Technical Specification 3.0.3 applies, which required that except as provided in the associated requirements, within one hour, action shall be initiated to place the unit in a mode in which the specification does not apply.

Technical Specification 3.0.4 requires that entry into an operational mode or other specified condition shall not be made unless the conditions for the Limiting Condition for Operation are met without reliance on provisions contained in the ACTION requirements.

Contrary to the above, during the period beginning at 9:00 p.m. on November 2, 1985 until 7:30 p.m. on November 4, 1985, the plant entered Modes 2 and 3 with both trains of the ECCS subsystems for Unit 1 inoperable in that the safety injection pumps would initially take suction from the volume control tank (VCT) instead of the RWST and the capability to automatically transfer suction from the RWST to the containment sump did not exist.

This is a Severity level III violation (Supplement I). (Civil Penalty—$50,000).

Summary of the Licensee's Responses

Duke Power Company, in its responses, admits that the violation occurred as stated in the Notice, but believes the civil penalty is not warranted and requests mitigation of the proposed civil penalty.

The licensee states that plant personnel were aware of the inoperability of the valves and acted accordingly. The licensee believes that although the valve operators were inoperable and the valves were not capable of automatic closure as designed, there were several factors that should be considered regarding the manual manipulation of the valves had a safety injection occurred.

One of the factors submitted for consideration was the existence of a procedure which could have resulted in the manual closure of valves 1NV-141 and 1NV-142, if a safety injection has occurred. Step D.2 of procedure EP/1/A/5000/01, "Safety Injection," required manual valve alignment, if necessary, by directing the operator to check the ESF monitor light panels and to "manually align equipment as required." The licensee's safety analysis shows that the charging pumps could potentially become hydrogen bound approximately 18.25 minutes after initiating safety injection, allowing sufficient time for manual actions.

The licensee also stated that the lower boration level of water in the VCT as compared to the RWST is not a safety concern. The boron concentration in the VCT would be approximately that of the reactor coolant system and would not affect reactivity which would be controlled by the control rods.

NRC Evaluation of the Response

The NRC staff has reviewed the licensee's responses and concludes that no new information has been presented which was not known to the staff at the time the Notice of Violation and Proposed Imposition of Civil Penalty was issued.

The staff notes that in the evaluation of this incident, the licensee places considerable reliance on manual actions to assure the safety function of the charging system for safety injection. The staff recognizes that the verification of the closure and, if necessary, manual alignment of the VCT outlet valves upon the initiation of safety injection is required by procedures and that there may have been enough time to perform the necessary manual actions. However, the staff does not typically acknowledge manual actions in design-basis accident analyses that require the charging system to operate automatically. Furthermore, with regard to the licensee's determination that the boron concentration of the VCT is not a safety concern based on the control of reactivity by the control rods, the injection of borated water of a sufficient boron concentration is to counter potential operational events. Examples of such events are: the failure of two or more control rods to insert following a reactor trip, an unexplained or uncontrolled reactivity increase, and an inadequate shutdown margin. The higher boron concentration of the RWST relative to the reactor coolant system is in part to ensure the availability of negative reactivity control.

The staff considers this violation to be significant because both trains of the charging system were in a degraded condition while the VCT outlet valves were open. The degraded condition of the charging system is cause for significant concern. In categorizing the incident as a Severity Level III violation, the staff recognizes that (1) certain emergency procedures were in place which could have led to the identification and closure of the required valves, (2) that plant personnel were aware that the VCT valves were inoperable although they were not aware that this violated a technical specification, and (3) that analyses showed that the charging pumps would not become inoperable for approximately 18 minutes after the initiation of safety injection. If the charging system had been determined to be unable to perform its intended safety function rather than being in a degraded condition, this incident would have been categorized a higher severity level. Therefore, the staff believes the violation was appropriately classified as a Severity Level III violation.

In considering mitigation of the civil penalty, although Duke Power Company requested mitigation of the proposed civil penalty, it failed to specifically address the five factors in section V(B) of 10 CFR Part 2, Appendix C, which

describes the bases for mitigation or escalation of a civil penalty. The five factors involve: prompt identification and reporting, unusually prompt and extensive corrective actions, past performance in the area of concern, prior notice of a similar event (escalation only), and multiple occurrences of a violation (escalation only). In evaluating these factors, the NRC considered that (1) there was not prompt identification of the violation in that the NRC identified this violation to the licensee approximately two months after the occurrence of the incident, (2) the corrective actions taken were not unusually prompt in that some of the corrective actions proposed by Duke Power Company will not be in place until 1987, and (3) the licensee's past performance at the McGuire facility in the area of plant operations is considered poor based on the Systematic Assessment of Licensee Performance (SALP) Category 3 ratings in the area of plant operations for the periods ending August 31, 1984 and February 28, 1986 and two escalated enforcement actions taken in 1984 and 1985 related to the failure to maintain the containment spray and upper head injection accumulator systems in a operable condition. The factors of prior notice of a similar event and multiple occurrences were not considered appropriate for escalation of the civil penalty. Therefore, the staff believes that the civil penalty was appropriately assessed without mitigation or escalation.

Conclusion

The violation occurred as stated in the Notice and the licensee has not provided an adequate basis for either mitigating or remitting the proposed penalty. Accordingly, civil penalty in the amount of Fifty Thousand Dollars ($50,000) should be imposed.

[FR Doc. 86-21865 Filed 9-25-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-395; License No. NPF-12; EA 86-45]

South Carolina Electric and Gas Company (V.C. Summer); Order Imposing Civil Monetary Penalty

I

South Carolina Electric and Gas Company (the licensee) is the holder of Operating License No. NPF-12 (the license) issued by the Nuclear Regulatory Commission (the NRC or Commission) on August 6, 1982. The license authorizes the licensee to operate the V.C. Summer facility in accordance with conditions specified therein.

II

A safety inspection of the licensee's activities under the license was conducted by the NRC on February 1-28, 1986. As a result of this inspection, it appeared that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated April 15, 1986. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice by letters dated May 15 and 23, 1986.

III

Upon consideration of the licensee's responses and the statements of fact, explanation, and argument for reduction of the severity level for Violation I and for mitigation or remission of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violations occurred as stated, that the Severity Level III categorization was appropriate, and that the civil penalty proposed for Violation I in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, at the above address. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 17th day of September 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix

On April 15, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations of NRC requirements. South Carolina Electric and Gas Company's (SCE&G) responses to the Notice were provided in letters dated May 15 and 23, 1986. A restatement of the violations, a summary of the licensee's responses, the NRC evaluation of the licensee's responses and its conclusions are set forth below.

Restatement of the Violations

I. Violations Assessed a Civil Penalty

A. Technical Specification 3.7.3 requires that two independent component cooling water (CCW) loops be operable in Modes 1, 2, 3, and 4. The action statement states that with one loop inoperable, restore at least two loops to operable status within 72 hours or be in at least hot standby within the next six hours and cold shutdown within the following 30 hours.

Contrary to the above, an incorrect breaker alignment rendered loop B of the component water cooling water system inoperable from January 30, 1986, until February 3, 1986. The loop was inoperable for approximately 100 hours while the reactor was in Modes 1, 2, 3, and 4.

B. Technical Specification 3.7.4 requires that two independent service water (SW) loops be operable in Modes 1, 2, 3, and 4. The action statement states that with one loop inoperable, restore at least two loops to operable status within 72 hours or be in at least

hot standby within the next six hours and cold shutdown with the following 30 hours.

Contrary to the above, loop B of the service water system was technically inoperable from January 30, 1986, until February 2, 1986, for a period of approximately 100 hours because post maintenance testing had not been completed on pump C, which was aligned to and supplying service water to this loop. Under the system design, pump B was incapable of starting automatically upon a safety injection signal because of the electrical alignment required for the operating C pump.

C. Technical Specification 6.8.1 requires that the applicable procedures recommended in Appendix "A" of Regulatory Guide 1.33, Revision 2, 1978, be established and implemented. Appendix A of Regulatory Guide 1.33 states that safety-related system procedures should include instructions for startup, shutdown, and changing modes of operation as appropriate. System Operating Procedure (SOP) 117 for the service water system and SOP 118 for the component cooling water system implement this requirement.

Contrary to the above, as of February 3, 1986, SOP 117 and SOP 118 did not provide adequate instructions for the startup and shutdown of the CCW and SW systems in that they did not specify the correct electrical alignment for the swing pump under each possible operating configuration.

D. Technical Specification 6.8.1 requires that the applicable procedures recommended in Appendix "A" of Regulatory Guide 1.33, Revision 2, 1978, be established and implemented. Appendix A of Regulatory Guide 1.33 states that safety-related system procedures should include instructions for startup, shutdown, and changing modes of operation as appropriate. Station Administrative Procedure SAP 200, Conduct of Operations, requires that the Shift Supervisor, Control Room Supervisor and Reactor Operator review the Removal and Restoration (R&R) log and be aware of the status of plant systems.

Contrary to the above, even though the R&R log was reviewed by the Shift Supervisor, the Control Room Supervisor, and the Reactor Operator between January 30, 1986 and February 3, 1986, they were not aware of the status of the "C" service water pump (i.e., the pump had been running without being declared operable) until notified by the NRC Inspector on February 3, 1986.

These violations have been categorized in the aggregate as a Severity Level III problem (Supplement I). (Cumulative Civil Penalty—$50,000 assessed equally between the violations).

Summary of the Licensee's Responses

SCE&G admits that the violations occurred as stated in the Notice but objects to the severity level of Violation I and requests mitigation or remission of the associated civil penalty.

The licensee believes that the incidents involved in Violation I did not create an adverse safety condition and that CCW and SW system equipment maintained their functional capability or were capable of performing their intended function via manual control board actuation. The licensee asserts that the practical safety significance of the failure of the Train B CCW pump to automatically start was minimal because of the procedural steps which required verification of two train flow following a safety injection signal. The licensee also states that, "Overall the events did not result in consequences which led to a substantial safety concern and therefore did not represent such a significant Technical Specification violation as to warrant a Severity Level III categorization."

In addition, the licensee contends that mitigating factors addressed in 10 CFR Part 2, Appendix C were not considered for the Severity Level III problem and associated civil penalty. SCE&G believes that extenuating and relevant circumstances surrounding the events combined with its prompt corrective actions establish the basis for mitigation of the proposed civil penalty. The licensee refers to its prompt identification and reporting of the violation involving the CCW system and its confidence that the violation involving the SW loops would have been self-identified and reported once design information was relayed to operations personnel. SCE&G believes that its corrective actions were prompt, fully comprehensive, and sufficient to prevent recurrence and argues that its past performance was not poor nor indicative of difficulties in the general area of understanding system design bases. The licensee does not believe the factors of prior notification of similar events or multiple occurrences to be an issue in this civil penalty.

The licensee's supplemental response of May 23, 1986 states that the corrections to the Systematic Assessment of Licensee Performance (SALP) issued by Region II on May 8, 1986 imply that the NRC's reference to prior poor performance in the cover letter for the Notice was based, "in large measure, if not entirely, on what has been acknowledged to be an inaccurate SALP assessment." The licensee concludes that the proposed civil penalty was not warranted or that the proposed civil penalty should at least be substantially mitigated.

NRC Evaluation of the Licensee Responses

While the licensee contends that the incidents which resulted in Violation I did not create an adverse safety condition, one of two trains for each of two safety-related systems was inoperable for approximately 100 hours while the reactor was in Mode 1, 2, 3, or 4. During this time, the affected trains would not have automatically started in response to a safety injection signal. The staff recognized that redundant trains of the CCW and SW systems remained operable and that the vertification of the operation of two trains upon the initiation of safety injection is required by SCE&G procedures. However, the NRC does not typically acknowledge manual operator actions in design basis accident analyses that require the CCW or SW systems to operate automatically. In addition, these conditions are similar to the example found in Supplement I, 10 CFR Part 2, Appendix C in which one component is inoperable for a time period in excess of that allowed by the technical specification action statement. Therefore the staff believes that Violation I was appropriately classified as a Severity Level III problem and reduction in severity level would not be appropriate.

Regarding mitigation or remission of the civil penalty, the mitigation and escalation factors addressed in the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1985) were considered in the staff's determination of the proposed civil penalty. In evaluating mitigation for prompt identification and reporting, the staff considered, among other things, the length of time the violations existed prior to discovery, the opportunity available to discover the violations, and the promptness and completeness of any required reports. In this case, one CCW loop was inoperable for 100 hours. Although SCE&G identified and reported the problem involving the CCW system, SCE&G did not recognize that one of two SW loops was technically inoperable for the same period of time until questioned by the NRC. Although SCE&G is confident it would have identified and reported the problem

once design information was relayed to operations personnel the NRC staff cannot allow mitigation of the civil penalty based on actions the licensee believes it would have been taken had it recognized the problem.

In evaluating mitigation based on SCE&G's prompt and extensive corrective actions, the staff recognizes that there was adequate basis for mitigation of the civil penalty. However, there was also a basis for escalation of the civil penalty because of SCE&G's prior poor performance in the area of plant operations. Although SCE&G believes its past performance was not indicative of difficulties in the general area of understanding system design bases, understanding system design bases is fundamental to understanding plant operations. In this case, prior poor performance was evidenced by the civil penalty of $50,000 issued on January 6, 1986 concerning system alignment errors which resulted in both Residual Heat Removal (RHR) system flowpaths being inoperable and the most recent Systematic Assessment of Licensee Performance (SALP) Category 3 rating in plant operations. Although the licensee argues that the staff's perception of poor prior performance was based on a SALP assessment subsequently acknowledged to be inaccurate, changes were made to the SALP assessment only to clarify the findings of a September 1985 inspection and to accurately describe the scope of eddy current testing conducted during two outages. No changes were made to the evaluation in the area of plant operations and the Category 3 rating.

Therefore, in summary, bases for both mitigation, for prompt and extensive corrective actions, and escalation, for prior poor performance, existed. The staff maintains that, on balance, neither mitigation nor escalation is appropriate. The NRC staff agrees with SCE&G that there is no basis for escalation of the civil penalty based on the factors of prior notice of a similar event or multiple occurrences of the violation.

Conclusion

The violation occurred as stated in the Notice and the licensee has not provided any new information to support a reduction in the severity level of the violation or for mitigating or remitting the proposed civil penalty. Therefore, a civil penalty in the amount of Fifty Thousand Dollars ($50,000) has been imposed.

[FR Doc. 86-21867 Filed 9-25-86; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—15320; File No. 812-6433]

N.W. Acceptance Corp; Application

September 19, 1986.

Notice is hereby given that N.W. Acceptance Corp. ("Applicant"), 700 Dallam Road, Neward, Delaware 19711, filed and application on July 11, 1986 and an amendment thereto on September 19, 1986, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for all the applicable provisions thereof.

Applicant is a Delaware corporation wholly-owned by Northwestern Savings and Loan Association ("Northwestern"), an Illinois' chartered mutual savings and loan association. Applicant states that it was organized primarily to facilitate the financing of long-term residential mortgages on one-to-four family residences through the issuance of one or more series of bonds ("Bonds") secured by certain mortgage collateral, and will have no significant assets other than those pledged as collateral for such Bonds.

Applicant will issue Bonds which are secured by mortage-backed certificates guaranteed by the Government National Mortgage Corporation ("GNMA Certificates"); mortgage participation certificates issued by the Federal Home Loan Mortage Corporation ("FHLMC Certificates"); and guaranteed mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates") (collectively, "Mortgage Certificates"). In addition to the Mortgage Certificates, the Bonds may be secured by certain collection accounts and reserve funds, including a reserve fund which would be used cover the amount by which payments received on any Mortgage Certificates which are backed by graduated payment mortgage loans ("GPMs") are less than the amount assumed to be available on such Mortgage Certificates because such amounts are computed on a level debt service basis. It is a standard practice in the structuring and marketing of collateralized mortgage obligations, such as the Bonds, to assume that all Mortgage Certificates pay on a level debt service basis even though the debt service on Mortgage Certificates backed by GPMs varies.

In the case of each series of Bonds: (i) Payments on the mortgage loans underlying the Mortgage Certificates sercuring such Bonds will be the primary source of funds for payments of principal and interest due on such Bonds; (ii) Such Bonds will be secured by collateral consisting primarily of Mortgage Certificates with an aggregate outstanding principal amount at least equal to the initial principal amount of such Bonds; and (iii) Scheduled available principal and interest payments on the Mortgage Certificates securing such Bonds (together with any required payments from any reserve funds with respect to such Bonds) plus income received thereon, will be sufficient to make the interest payments on and amortize the principal of such Bonds by their stated maturities.

It is anticipated that the Mortgage Certificates separately securing each series of Bonds will either represent mortgage loans originated by Northwestern or will be acquired by Northwestern in the open market. Such Mortgage Certificates will either represent contributions to the capital of Applicant by Northwestern or will be purchased by Applicant from Northwestern, principally using the net proceeds of the sale of the related Bonds. The Mortgage Certificates securing each series of Applicant's Bonds will be pledged and assigned to an independent trustee ("Trustee") and will be physically held by and registered in the name of the Trustee, its nominee or one or more independent custodians acting as agent for the Trustee.

Each series of Bonds will be issued pursuant to an indenture between Applicant and the Trustee as supplemented by one or more supplemental indentures for such series ("Indenture"). Indentures for each offering registered under the Securities Act of 1933 ("1933 Act") will be qualified under the provisions of the Trust Indenture Act of 1939, unless an appropriate exemption is available. Under the related Indenture, Applicant will have a limited right to substitute new Mortgage Certificates for Mortgage Certificates initially pledged as security for the Bonds, provided that such substitution does not result in a reduction of the bond rating assigned to the Bonds by one or more nationally recognized rating agencies.

Although the Bonds will not be redeemable by the Bondholders, they may be subject to special redemption if the Trustee determines that there is insufficient cash flow from the Mortgage Certificates to supporty the outstanding Bonds between certain payment dates.

In addition, all or a portion of each series of Bonds may be subject to redemption at the option of Applicant under the circumstances set forth in the related Indenture and disclosed in the prospectus. Applicant states that it will not be able to impair the security affored by the Mortgage Certificates to the holders of the Bonds of any series ("Boldholders") without the consent of each Bondholders to be affected thereby.

Applicant submits that the relief requested is necessary, appropriate and in the public interest because: (i) Applicant is not the type of entity to which the provisions of the Act were intended to apply; (ii) Applicant may be unable to proceed with its proposed business if the uncertainties concerning the applicability of the Act are not removed; (iii) Applicant's proposed business is intended to serve a recognized and critical public need; (iv) the granting of the requested exemption will not be inconsistent with the purposes of the Act and protection of investors, who will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Indenture and the Trustee representing their interests under the Indenture; and (v) the public interest would be served by granting the exemption requests.

As a condition to the granting of the requested relief, Applicant expressly agrees that the proposed transaction it intends to enter into will conform to the following requirements:

(1) Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the mortgage collateral underlying the Bonds will be limited to mortgage certificates guaranteed by GNMA, FNMA or FHIMC.

(3) If new mortgage collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) Have similar payment terms and cash flow as the collateral replaced; (iii) Be insured or guaranteed to the same extent as the collateral replaced; and (iv) Meet the conditions set forth in paragraph (2), (4) and (6). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the mortgage certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

(4) All mortgage certificates, funds, accounts or other collateral securing a series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in 1933 Act Rule 405, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

(6) No less often than annually, an independent public accountant will audit the books and records of Applicant and in addition will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 14, 1986 at 5:30 p.m., do so by submittng a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-21612 Filed 9-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15319; File No. 812-6463]

Overland Funding, Inc.; Application

September 19, 1986.

Notice is hereby given that Overland Funding, Inc. ("Applicant"), 300 Delaware Avenue, Suite 1703, Wilmington, Delaware 19899, filed an application on August 22, 1986, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of all applicable provisions.

According to the application, Applicant is a wholly owned subsidiary of Santa Fe Financial Corporation ("Santa Fe"), a Kansas corporation and a wholly owned, service subsidiary of The Overland Park Savings and Loan Association, F.A. ("Overland Park Savings"), a federally-chartered stock savings and loan association. Applicant is authorized to engage in a limited range of activities relating to the acquisition, ownership, holding, and pledging of certain mortgage certificates, the issuance and sale of series ("Series") of bonds ("Bonds") collateralized by such mortgage certificates and other activities incidental thereto. Applicant will have no significant assets other than those pledged as collateral for the Bonds.

Each series of Bonds will be separately secured by mortgage-backed certificates guaranteed by the Government National Mortgage Association; Guaranteed Mortgage Pass-Through Certificates issued by the Federal National Mortgage Association; and Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation (all three, collectively, "Mortgage Certificates"). Each Series will be issued pursuant to an indenture and supplemental indentures ("Indentures") between Applicant and an independent trustee ("Trustee"). Indentures for each Bond offering will be qualified under the Trust Indenture Act of 1939. The Mortgage Certificates securing each Series will be pledged and assigned to the Trustee. It is anticipated that the Mortgage Certificates securing each Series will be acquired by Santa Fe in the open market. Such Mortgage Certificates will be purchased by Applicant from Santa Fe at their then current market value, principally using the net proceeds of the sale of the related Series.

In the case of each Series: (i) Payments on the mortgage loans underlying the Mortgage Certificates securing the Bonds will be the primary source of funds for payments of principal and interest due on such Bonds; (ii) the Bonds will be secured by collateral consisting primarily of Mortgage Certificates with an aggregate outstanding principal amount approximately equal to the principal amount of such Bonds; and (iii) schedule principal and interest payments on the Mortgage Certificates securing the Bonds, in accordance with the terms of such Mortgage Certificates (together

with any required payments from any reserve funds created with respect to such Bonds), plus reinvestment income received thereon (at an assumed reinvestment rate) will be sufficient to make timely payments of interest on the Bonds and to retire each class of Bonds not later than its stated maturity. Applicant and the Trustee will not be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds.

The Bonds may be subject to redemption at the option of Applicant in the circumstances provided in the related Indenture. The Bonds may also be subject to special redemption as specified in the related Indenture in the event the Trustee determines that as a result of substantial prepayments on the underlying mortgage loans or the low yield available for the reinvestment of the distributions on the Mortgage Certificates, the amount of cash anticipated to be available on the next specified payment date would be insufficient to make the required payments on the Bonds of such Series.

Under the Indenture and under the conditions described below, Applicant will have a limited right to substitute new Mortgage Certificates for Mortgage Certificates initially pledged as security for the Bonds, provided that such substitution does not result in a reduction of the rating assigned to the Bonds by one or more nationally recognized rating agencies.

As conditions to the granting of the order, Applicant expressly agrees that its future securities offerings will be subject to the following:

(1) Each Series of Bonds will be registered under the Securities Act of 1933 ("1933 Act") unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act;

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the mortgage collateral underlying the Bonds will be limited to Mortgage Certificates guaranteed by GNMA, FNMA or FHLMC;

(3) If new Mortgage Certificates are substituted (the "Substitute Mortgage Certificates"), the Substitute Mortgage Certificates will (i) be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, Substitute Mortgage Certificates will not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new Mortgage Certificates be substituted for any Substitute Mortgage Certificates;

(4) All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian will not be an affiliate (as the term "affiliate" is defined in Rule 405, 17 CFR 230.405 under the 1933 Act) of Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral;

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant;

(6) The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act; and

(7) No less often than annually, an independent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest of the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Applicant submits that the relief requested is necessary, appropriate and in the public interest because: (i) Applicant is not the type of entity to which the provisions of the Act were intended to be applied; (ii) Applicant may be unable to proceed with its proposed business if the uncertainties concerning the applicability of the Act are not removed; (iii) Applicant's proposed business is intended to serve a recognized and critical public need; and (iv) the granting of the requested exemption will not be inconsistent with the protection of investors. Applicant submits that the relief requested in necessary or appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 14, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-21813 Filed 9-25-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 22, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

John Blair and Company Common Stock, $1.00 Par Value (File No. 7-9227)

Wm Wrigley Jr. Company Common Stock, No Par Value (File No. 7-9228)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 14, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-21814 Filed 9-25-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Olson Air Service, Inc., for Certificate of Public Convenience and Necessity

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause (order 86-9-59), docket 43775.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Olson Air Service, Inc., fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than October 10, 1986.

ADDRESSES: Objections and answers to objections should be filed in Docket 43775 and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590 and should be served on the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary Catherine Terry, Special Authorities Division, Office of Aviation Operations, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590 (202) 366-2343.

Dated: September 22, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-21816 Filed 9-5-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending September 19, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44358

Parties: Members of International Air Transport Association.

Date Filed: September 16, 1986.

Subject: Proportional Rates—Japan and Indonesia.

Proposed Effective Date: October 1, 1986.

Docket No. 44363

Parties: Members of International Air Transport Association.

Date Filed: September 19, 1986.

Subject: Proportional fares for Trondheim.

Proposed Effective Date: October 29 1986.

Docket No. 44362

Parties: Delta Air Lines, Inc. and Western Air Lines, Inc.

Date Filed: September 18, 1986.

Subject: Joint Application of Delta Air Lines, Inc. and Western Air Lines, Inc. request an exemption from section 408 of the Act, or, in the alternative, for approval by show-cause procedures of the proposed acquisition of control of Western by Delta pursuant to section 408 of the Act.

Docket No. 44365

Parties: Texas Air Croporation and People Express, Inc.

Date Filed: September 19, 1986.

Subject: Joint Application of Texas Air Corporation and People Express, Inc. request expedited exemption from, or for approval of the proposed acquisition of control of People Express by Texas Air pursuant to sections 401, 408, and 416 of the Act.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-21818 Filed 9-25-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 19, 1986

The following applications for certificates of public covenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44355

Date Filed: September 15, 1986

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 14, 1986.

Description: Application of Pan American World Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests the Department to amend its certificate for Route 136 so as to permit Pan Am to provide scheduled combination service between a point or points in the United States and Guayaquil and Quito, Ecuador, and further, to allow Pan Am to integrate service to/from and beyond Ecuador with existing authority contained on its certificate for Route 136.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-21817 Filed 9-25-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 22, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0022
Form Number: ATF F 5320.30 (formerly ATF F 7560.8)
Type of Review: Extension
Title: Application of Transport or to Temporarily Export Certain National Firearms Act (NFA) Firearms

OMB Number: 1512-0024
Form Number: ATF F 1 (5320.1)
Type of Review: Extension
Title: Application to Make and Register a Firearm

OMB Number: 1512-0028
Form Number: ATF F 5320.5
Type of Review: Extension
Title: Application for Tax-Exempt Transfer and Registration of a Firearm

OMB Number: 1512-0027
Form Number: ATF F 4 (ATF F 5320.4)
Type of Review: Extension
Title: Application for Taxpaid Transfer and Registration of Firearms

OMB Number: 1512-0098
Form Number: ATF F 5520.2 and ATF REC 5520/1
Type of Review: Extension
Title: Annual Report of Concentrate Manufacturers (ATF F 5520.2) and

Usual and Customary Business Records—Volatile Fruit Flavor Concentrate Plants (ATF REC 5520/1)
OMB Number: 1512–0483
Form Number: None
Type of Review: Extension
Title: Use of the Word "Light" (lite) in the Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages
Clearance Officer: Robert G. Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: 1545–0123
Form Number: IRS Form 1120; Schedule D, Form 1120;' and Schedule PH, Form 1120
Type of Review: Revision
Title: U.S. Corporation Income Tax Return (1120); Capital Gains and Losses (Schedule D, Form 1120); and Computation of U.S. Personal Holding Company Tax (Schedule PH, Form 1120)
OMB Number: 1545–0619
Form Number: IRS Form 6765
Type of Review: Revision
Title: Credit for Increasing Research Activities (or for claiming the orphan drug credit)
Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,
Departmental Reports Management Office.
[FR Doc. 86–21864 Filed 9–25–86; 8:45 am]
BILLING CODE 4810–25–M

Bureau of Alcohol, Tobacco, and Firearms

[Notice No. 605 Reference: ATF O 1100.1D]

Statement of Mission, Organization and Functions

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of Treasury.

ACTION: General notice.

SUMMARY: This document is a general statement of the mission, organization and functions of the Bureau of Alcohol, Tobacco and Firearms, and is filed in compliance with 5 U.S.C. 552. It has no effect upon the existing regulations or administrative procedures of the Bureau; thus, it does not impose any additional or modified recordkeeping or reporting requirements on the public.

EFFECTIVE DATE: This order reflects the approved organization as of July 1, 1986.

FOR FURTHER INFORMATION CONTACT: James O. Pasco, Assistant Director (Congressional and Media Affairs), Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Room 4206, Washington, DC 20226. Telephone (202) 566–7376.

GENERAL

1. Mission

The mission of the Bureau of Alcohol, Tobacco and Firearms is:

a. To reduce the criminal use of firearms and to assist other Federal, State and local law enforcement agencies in reducing crime and violence by effective enforcement of the Federal firearms laws.

b. To provide for the public safety by reducing the criminal misuse of explosives, combatting arson-for-profit schemes, and removing safety hazards caused by improper and unsafe storage of explosives materials.

c. To assure the collection of all alcohol and tobacco tax revenues and obtain a high level of compliance with the alcohol and tobacco tax statutes.

d. To suppress commercial bribery, consumer deception and other prohibited trade practices in the beverage alcohol industry by effective enforcement and administration of the Federal Alcohol Administration Act.

e. To suppress illicit manufacture and sale of nontaxpaid beverage alcohols.

f. To assist the States in their efforts to eliminate interstate trafficking in the sale and distribution of contraband cigarettes.

2. Establishing Documents and Subsequent Amendments

The Bureau of Alcohol, Tobacco and Firearms was established by Treasury Department Order 221, dated June 6, 1972, by authority of the Secretary of the Treasury and the authority of Reorganization Plan No. 26 of 1950.

a. Treasury Department Order 221 provided for the

(1) ". . . transfer, as specified herein, (of) the functions, powers and duties of the Internal Revenue Service arising under laws relating to alcohol, tobacco, firearms and explosives (including the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service) to the Bureau of Alcohol, Tobacco and Firearms (hereinafter referred to as the Bureau) which is hereby established. The Bureau shall be headed by the Director, Bureau of Alcohol, Tobacco and Firearms (hereinafter referred to as the Director). The Director shall perform his duties under the general direction of the Secretary of the Treasury (hereinafter referred to as the Secretary) under the supervision of the Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations) [hereinafter referred to as the Assistant Secretary]. The Director shall perform the functions, exercise the powers, and carry out the duties of the Secretary in the administration and enforcement of the following provisions of law:

(a) Chapters 51, 52 and 53 of the Internal Revenue Code of 1954 and sections 7652 and 7653 of such Code insofar as they relate to the commodities subject to tax under such chapters;

(b) Chapters 61 to 80, inclusive, of the Internal Revenue Code of 1954, insofar as they relate to activities administered and enforced with respect to chapters 51, 52 and 53;

(c) The Federal Alcohol Administration Act (27 U.S.C. Chapter 8);

(d) 18 U.S.C. Chapter 44 (relating to firearms);

(e) Title VII, Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. Appendix sections 1201–1203) (Note: Title VII was repealed by Pub. L. No. 99–308, 100 Stat. 449, on May 19, 1986);

(f) 18 U.S.C. 1262–1265; 1952; 3615 (relating to liquor traffic);

(g) Act of August 9, 1939 (49 U.S.C. App. Chapter 11), insofar as it involves matters relating to violations of the National Firearms Act;

(h) 18 U.S.C. Chapter 40 (relating to explosives); and

(i) Section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) relating to the control of the importation of arms, ammunition and implements of war." (Note: This section was recodified as 22 U.S.C. 2778 in 1976.)

(2) "All functions, powers and duties of the Secretary which relate to the administration and enforcement of the laws specified in paragraph (1) hereof are delegated to the Director. Regulations for the purposes of carrying out the functions, powers and duties delegated to the Director may be issued by him with approval of the Secretary.

(a) "All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration and enforcement of the laws specified in paragraph (1) hereof, which are in effect or in use on the effective date of this

Order, shall continue in effect as regulations, rules, instructions, and forms of the Bureau until superseded or revised.

(b) "All existing activities relating to the collection, processing, depositing, or accounting for taxes (including penalties and interest), fees, or other moneys under the laws specified in paragraph (1) hereof, shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division or the Assistant Regional Commissioners (Alcohol, Tobacco and Firearms) until the Director shall otherwise provide with the approval of the Secretary.

(c) "All existing activities relating to the laws specified in paragraph (1) hereof which are now performed by the Bureau of Customs, shall continue to be performed by such Bureau until the Director shall otherwise provide with the approval of the Secretary.

(3) *Use of Terms.* (a) "The terms 'Director, Alcohol, Tobacco and Firearms Division' and 'Commissioner of Internal Revenue' wherever used in regulations, rules, instructions, and forms, issued or adopted for the administration and enforcement of the laws specified in paragraph (1) hereof, which are in effect or in use on the effective date of this Order, shall be held to mean the Director.

(b) "The term 'Assistant Regional Commissioner' wherever used in regulations, rules, instructions and forms, shall be held to mean Regional Director.

(c) "The terms 'internal revenue officer' and 'officer, employee or agent of the internal revenue' wherever used in such regulations, rules, instructions and forms, in any law specified in paragraph (1) above, and in 18 U.S.C. 1114, shall include all officers and employees of the United States engaged in the administration and enforcement of the laws administered by the Bureau, who are appointed or employed by, or pursuant to the authority of, or who are subject to the directions, instructions or orders of the Secretary.

(d) "The above terms, when used in regulations, rules, instructions and forms of government agencies other than the Internal Revenue Service, which relate to the administration and enforcement of the laws specified in paragraph (1) hereof, shall be held to have the same meaning as if used in regulations, rules, instructions and forms of the Bureau.

(4) *Transferred to the Bureau.* (a) "There shall be transferred to the Bureau all positions, and unexpended balances of appropriations, allocations and other funds of the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service, including those of the Assistant Regional Commissioners (Alcohol, Tobacco and Firearms), Internal Revenue Service.

(b) "In addition, there shall be transferred to the Bureau such other positions, personnel, records, property, and unexpended balances of appropriations, allocations, and other funds, as are determined by the Assistant Secretary for Administration, in consultation with the Assistant Secretary, the Director, and the Commissioner of Internal Revenue Service, to be necessary or appropriate to carry out the purposes of this Order.

(c) "There shall be transferred to the Chief Counsel of the Bureau such functions, powers, and duties, and such positions, personnel, records, property, and unexpended balances of appropriations, and other funds, of the Chief Counsel of the Internal Revenue Service, as the General Counsel of the Department shall direct . . ."

b. Treasury Department Order 221–3, dated December 24, 1974, provided for the transfer of wagering enforcement responsibilities under the Internal Revenue Code from the Internal Revenue Service (IRS) to the Bureau. These responsibilities were returned to IRS by TDO 221–3 (Revision 2), dated January 14, 1977. However, the Bureau continued to pursue wagering investigations then in progress.

c. Treasury Decisions (T.D.) ATF–32 and ATF–33, approved October 1, 1976, amended the Code of Federal Regulations, Titles 27 and 26, respectively, to initiate certain changes in the organizational structure of the Bureau, effective December 1, 1976. These changes were explained in T.D. ATF–33 as follows:

(1) "A basic reorganization of the structure of the Bureau of Alcohol, Tobacco and Firearms was announced by the Department of the Treasury on August 30, 1976. The reorganization primarily affects the criminal enforcement function and organization of the Bureau.

(2) "One of the major features of the reorganization is elimination of the position of Regional Director and associated regional criminal enforcement staffs. The Regional Director currently functions as the Bureau's chief regional official. Accordingly, duties performed by the Regional Director will be assumed by other regional and field officials.

(3) "Furthermore, straight line management systems for regional and field functions are implemented by assigning direct line authority over:

(a) Special agents in charge to the Assistant Director (Criminal Enforcement);

(b) Regional regulatory administrators (formerly assistant regional directors, regulatory enforcement) to the Assistant Director Regulatory Enforcement);

(c) Regional administrative officers to the Assistant Director (Administration); and

(d) Chiefs of field laboratories to the Assistant Director (Technical and Scientific Services).

(4) "Therefore, the terms 'Assistant Regional Commissioner (Alcohol, Tobacco and Firearms)' or 'Regional Director' wherever used in Part 601 of Subchapter H shall mean the 'special agent in charge' or the 'regional regulatory administrator in the Bureau of Alcohol, Tobacco and Firearms.'

(5) "The term 'Assistant Regional Commissioner (Alcohol and Tobacco Tax)' or 'Assistant Regional Commissioner (Alcohol, Tobacco and Firearms)' wherever used in §§ 301.6091–1, 301.6311–1, 301.6402–2, and 301.6404–1 of Subchapter F shall mean the regional regional regulatory administrator in the Bureau of Alcohol, Tobacco and Firearms.

(6) "The term 'Assistant Regional Commissioner (Alcohol, Tobacco and Firearms)' wherever used in §§ 301.7321–1, 301.7322–1, and 301.7328.1 of Subchapter F shall mean the 'special agent in charge in the Bureau of Alcohol, Tobacco and Firearms.'

(7) "The term 'Assistant Regional Commissioner (Alcohol, Tobacco and Firearms)' wherever used in § 301.9000–1 of Subchapter F shall mean the 'special agent in charge,' the 'regional regulatory administrator,' the 'regional administrative officer,' or the 'chief, field laboratory in the Bureau of Alcohol, Tobacco and Firearms.'

(8) "Because this Treasury decision is administrative in nature and merely effects an internal reorganization, it is found unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b).

(9) "This Treasury decision will be effective December 1, 1976."

d. Treasury Department Order 190 (Revision 15), dated March 16, 1978, provided that the Bureau of Alcohol, Tobacco and Firearms would be directly supervised thereafter by the Assistant Secretary (Enforcement).

e. Treasury Department Order 120–1, dated December 5, 1978, provided that:

(1) "The Director of the Bureau of Alcohol, Tobacco and Firearms is delegated the authority to administer and enforce the provisions of 18 U.S.C. Chapter 114 (relating to trafficking in

contraband cigarettes) and the provisions of the Act of August 9, 1939 (49 U.S.C. Chapter 11), insofar as that Act involves matters relating to violations of 18 U.S.C. Chapter 114.

(2) "The Director of the Bureau of Alcohol, Tobacco and Firearms is hereby authorized to prescribe all needful rules and regulations for enforcement of the laws specified in paragraph one, subject to the approval of the Secretary of his delegate."

f. On October 1, 1979, with the Treasury Department's approval, regional offices of investigations were established by the Office of Criminal Enforcement to supervise district office operations.

g. A memorandum from the Assistant Secretary (Enforcement), dated January 19, 1983, approved a Bureau plan to establish an alignment "of five regions for . . . Regulatory Enforcement, Administration, and Legal functions." The five regions established under this alignment are delineated in section 32.

h. The abolishment of all Criminal Enforcement regional offices of investigation and the disestablishment of all Criminal Enforcement regional boundaries was approved by the Treasury Department on Sepetmber 23, 1983. Effective with the implementation of this change, the activity's district offices reported directly to the Assistant Director (Criminal Enforcement).

i. A memorandum from the Treasury Department, dated September 27, 1983, approved a proposal for an executive level management reorganization in the Bureau, which became effective on January 2, 1984. This plan provided for:

(1) Establishing two deputy directorships to replace the single deputy directorship that had previously existed. (The incumbents were to serve concurrently as associate directors for law enforcement and compliance operations, respectively.)

(2) Retitling the Office of Criminal Enforcement as the Office of Law Enforcement; the Office of Regulatory Enforcement as the Office of Compliance Operations; and the Office of Administration as the Office of the Comptroller.

(3) Abolishing the Office of Planning and Evaluation and the Office of Technical and Scientific Services. The Headquarters and field laboratory functions formerly managed by Technical and Scientific Services were transferred to the Office of the Comptroller under supervision of a Director (Laboratory Services).

(4) Retitling the assistant directorships for law enforcement and compliance operations as associate directorships. The title of the Assistant Director (Administration) was changed to Comptroller.

j. On January 2, 1984, concurrent with the executive-level reorganization, the position title of Regional Regulatory Administrator was changed to Regional Director (Compliance).

k. On October 1, 1985, with the Treasury Department's approval, the Bureau's Administrative functions were centralized. This change called for the abolishment of the regional administrative offices and transfer of their functions to Headquarters.

3. History and evolution of the bureau.

a. *Alcohol and Tobacco Taxes.* (1) Madison's notes on the Constitutional Convention reveal clearly that the framers of the Constitution believed that for some time, the principal if not sole support of the new Federal Government would be provided by customs duties and taxes connected with shipping and importations.

(2) The first important Federal legislation concerning liquor and tobacco taxation was the Revenue Act of March 3, 1791. The law included a general ad valorem duty on importations, and taxes on a wide variety of items such as spirits and snuff. In 1792 the Revenue Act was amended, providing for taxes from 7 to 25 cents per gallon on whiskey, depending on alcoholic proof and whether foreign or domestic ingredients were used. Owners of stills with annual capacities of 400 gallons or less could instead pay 54 cents per gallon capacity. The Revenue Act provoked considerable opposition and resistance. The most serious incident was the Whiskey Rebellion, which occurred in western Pennsylvania in 1794. Insurgents openly defied the Government in its attempt to collect the whiskey tax until President Washington dispatched the Federal Militia to restore order.

(3) In September 1794 a tax was imposed on snuff. This was replaced in March 1795 by a tax on snuff mills, which was repealed in June 1796.

(4) On July 1, 1802, the portion of the Revenue Act relating to excise taxes was repealed. However, on July 24, 1813, the excise tax was reimposed on liquor by levying duties on distillery licenses.

(5) On December 23, 1817, internal taxation was discontinued. However, a tax bill was again enacted on August 5, 1861, providing for licensing and taxes on stills, distillery plants, spirits and fermented liquors.

(6) On July 1, 1862, a bill was enacted which created the foundation for the present internal revenue system. Taxation on distilled spirits was set at 20 cents per gallon. Taxes were also imposed on cigars, tobacco and snuff. On July 1, 1862, the first Commissioner of Internal Revenue was appointed. His duties included the administration of alcohol and tobacco tax laws, and the retention of detectives for the protection of this revenue.

(7) Other alcohol and tobacco tax laws were enacted as follows:

(a) Cigarette taxes, June 1864.

(b) Stamp tax system for liquor and tobacco, July 1868.

(c) Denatured Alcohol Act (tax-free industrial and medicinal use of alcohol), June 1906.

(d) Revenue Act (taxing beverage spirits at $6.40 per gallon), 1918.

(e) Liquor Taxing Act (taxing beverage alcohol at $2 per proof gallon), January 1934.

(8) In November 1978, the United States Code was amended (18 U.S.C. Chapter 114), making it a Federal crime to transport cigarettes across State lines for the purpose of avoiding State tobacco taxes.

b. *Firearms and Explosives.* (1) The National Firearms Act became law in 1934. It was proposed after the attempted assassination of President-elect Franklin D. Roosevelt, and following the proliferation of "gangland" murders using machine guns, short-barreled shotguns, and similar weapons.

(2) The Act imposed a tax on the transfer of "gangster type" weapons, and required their registration. Since it was based on the Government's power to levy taxes, responsibility for the National Firearms Act was given to the Internal Revenue Service. The Act is directed at the control of "gangster type" weapons only, and not at sporting firearms. The following types of weapons are regulated:

(a) Machine guns.

(b) Shotguns having a barrel or barrels less than 18 inches long.

(c) A weapon made from a shotgun, if such weapon as modified has an overall length of less than 26 inches, or a barrel or barrels less than 18 inches long.

(d) Rifles having a barrel or barrels less than 16 inches in length.

(e) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches, or a barrel or barrels less than 16 inches long.

(f) Any weapon or device capable of being concealed on the person, from which a shot can be discharged through the energy of an explosive.

(g) A pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell.

(h) Any weapon with combination rifle or shotgun barrels of between 12

and 18 inches long, from which only a single discharge can be made from either barrel without manual reloading.

(i) A muffler of silencer for any firearm or explosive device.

(3) Responsibility for enforcing the National Firearms Act was shuttled from division to division within the IRS. In 1941, the Alcohol Tax Unit assumed responsibility for enforcing the criminal violation sections of the law. In 1951, administration of the regulatory provisions of the Act was transferred to the Alcohol and Tobacco Tax Division (as the Alcohol Tax Unit has become known).

(4) The National Firearms Act was amended by Title II of the Gun Control Act of 1968, extending registration to destructive devices, including bombs. In addition, existing transfer requirements were tightened.

(5) The Federal Firearms Act became law in 1938. It was subsequently replaced by the Omnibus Crime Control and Safe Streets Act of 1968, which was amended by Title I of the Gun Control Act of 1968. Title I ensures the integrity of firearms transaction records; strengthens dealer licensing; prohibits importation of certain firearms; makes it a crime for certain categories of people to possess or transport firearms in interstate commerce; and provides assistance to State and local law enforcement officers in reducing crime and violence.

(6) Title VII of the Safe Streets Act prohibits possession of a firearm by any person who is a convicted felon; mentally incompetent; and alien illegally in the United States; a person who has renounced his U.S. citizenship; or person discharged from the military service under dishonorable conditions. Title VII was repealed by Pub. L. No. 99-308, 100 Stat. 449, on May 19, 1986.

(7) Title XI of the Organized Crime Control Act of 1970 provides for the licensing of all manufactures, importers, and dealers of explosives.

c. *Background and Evolution of Present Organization.* (1) On May 10, 1934, the Alcohol Tax Unit was established within the Interval Revenue Service to regulate the legitimate production of distilled spirits, wine and beer, and to prevent the illegal production of these products.

(2) On August 29, 1935, the President approved the Federal Alcohol Administration Act, passed by Congress to embody into permanent statutory form most of the controls exercised by the Federal Government. The Federal Alcohol Administration was established as a semiautonomous agency of the Treasury Department to administer the Act. On June 30, 1940, the FAA was abolished and its functions transferred to the Alcohol Tax Unit pursuant to a Presidential reorganization plan. Since then, the enforcement of the Act has been closely integrated with the functions of tax administration.

(3) Administration of the Federal tobacco tax laws had been vested in the Commissioner of Internal Revenue since the appointment of the first commissioner in 1862. In November 1951, tobacco tax functions were transferred to the Alcohol Tax Unit from the Miscellaneous Tax Unit, and the combined activity became known as the Alcohol and Tobacco Tax Division.

(4) In October 1968, the Alcohol and Tobacco Tax Division assumed responsibility for the Gun Control Act of 1968, and was renamed the Alcohol, Tobacco and Firearms Division.

(5) Prior to July 1, 1972, the Alcohol, Tobacco and Firearms Division was part of the Internal Revenue Service. The Division's Director was responsible for the administration and enforcement of all internal revenue laws and regulations relating to distilled spirits and other beverages and products with an alcoholic content, and to cigars, cigarette papers and tubes; and the firearms and explosives laws mentioned above.

(6) On February 29, 1972, the Secretary of the Treasury announced that effective July 1, 1972, the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service would be established as a separate agency within the Treasury Department, to be named the Bureau of Alcohol, Tobacco and Firearms.

(7) On December 5, 1978, The Bureau assumed responsibility for enforcing 18 U.S.C. Chapter 114, relating to interstate trafficking in contraband cigarettes.

4-10 Reserved

Organization and Functions

11. The Bureau

The Bureau of Alcohol, Tobacco and Firearms (ATF) is a component agency of the Treasury Department. It is headed by a Director, who serves under the general direction of the Secretary of the Treasury and under the supervision of the Assistant Secretary (Enforcement). (The Bureau organization chart is shown in Exhibit 1.) ATF has its Headquarters in Washington, DC. Major field offices are organized as follows:

a. The Assistant to the Director (Equal Opportunity) maintains five regional equal opportunity offices to monitor equal opportunity programs at the field level.

b. The Office of the Chief Counsel supervises five regional legal staffs, headed by regional counsels. In addition, there are two district legal staffs, headed by district counsels, who report to the regional counsel for their respective regions. These staffs provide legal support services for ATF field offices located within their respective regions and districts.

c. Within the Office of the Comptroller, the Director (Laboratory Services) supervises a National Laboratory Center in Rockville, Maryland, and field laboratories in Atlanta and San Francisco.

d. The Office of Law Enforcement conducts its field operations through its twenty-two district offices nationwide. Each district office is headed by a special agent in charge (SAC). Subordinate offices in each district, called groups or posts of duty, are headed by group supervisors and resident agents in charge, respectively.

e. The Office of Compliance Operations conducts its field activities under the general supervision of five regional directors (Compliance). In each region, chiefs of field operations supervise several area offices, each of which is headed by an area supervisor. There are 35 area offices nationwide, including the Office of Puerto Rico Operations. Additional places of assignment, called posts of duty, are located as warranted by workload concentrations.

f. The Internal Investigations Division (Office of Internal Affairs) maintains offices in Chicago and San Francisco in addition to Bureau Headquarters.

12. Office of the Director

a. *Director.* The Director of the Bureau of Alcohol, Tobacco and Firearms, in conformity with policies and delegations of authority made by the Secretary of the Treasury, establishes the policies and administers the activities of the Bureau of Alcohol, Tobacco and Firearms.

b. *Deputy Directors.* The deputy directors assist the Director in all aspects of the management of the Bureau, and as directed perform the duties of the Director during the latter's absence. In addition, the incumbents serve concurrently as associate directors with immediate authority over Law Enforcement and Compliance Operations.

c. *Assistant to the Director (Equal Opportunity).* Acts as principal assistant to the Director in all matters of equal employment opportunity relating to actions required under Pub. L. 92-261 throughout the United States. Directs and administers the development and implementation of the Bureau's equal

opportunity policies, and supervises the activities of the Office of Equal Opportunity throughout the Bureau. On general equal opportunity matters, represents the Director to the Congress, the Department of the Treasury and such agencies as the Equal Employment Opportunity Commission and the Office of Personnel Management. Recommends budget and staffing resource requirements for the program. As delegated by the Director, is responsible for final decisions regarding all compliants filed and for recommending specific actions, e.g., promotions, retroactive pay, reevaluations, or training, in resolution of compliants.

13. Chief Counsel

The Chief Counsel operates under the general direction of the General Counsel of the Department of the Treasury and is subject to the supervision of the Assistant General Counsel (Enforcement), who serves as legal adviser to the Assistant Secretary (Enforcement). The Chief Counsel is the legal adviser to the Director of the Bureau of Alcohol, Tobacco and Firearms and is responsible for performing all of the legal services connected with provisions of the IRC and USC which relate to beverage alcohols, tobacco, firearms and explosives; section 38 of the Arms Export Control Act of 1976, relating to the control of the importation of arms, ammunition and implements of war; legal work arising from the Federal Tort Claims Act and the Small Claims Act; and the Military Personnel and Civilian Employees' Claims Act of 1964. Prepares, reviews or assists in the preparation of proposed legislation, regulations, and executive orders relating to the laws affecting and enforced by the Bureau; makes recommendations to the Department of Justice for the prosection of cases referred to the Chief Counsel by the Director, Bureau of Alcohol, Tobacco and Firearms. The Chief Counsel supervises the Bureau's five regional counsel and two district counsel offices.

14. Reserved

15. Assistant Director (Congressional and Media Affairs)

Serves as principal assistant to the Director in matters relating to congressional liaison, public and industry information policies, and compliance with the Freedom of Information and Privacy Acts. Informs program managers at all levels of congressional hearings, decisions and legislative proposals likely to affect Bureau operations, either directly or indirectly. Works closely with the Director and Deputy Directors to ensure harmonious relations with members of Congress, their staffs and those committee which oversee the work of the Bureau. Coordinates responses to congressional inquiries. Serves as the Bureau's principal point of contact with the news media, and assists managers in responding to media inquiries at the local level. Maintains biographical, historical and operational data to respond to such inquiries. Ensures prompt action to public information requests under the Freedom of Information and Privacy Acts, and assists managers in interpreting their responsibilities under those acts. Provides liaison between the Bureau and the Department's assistant secretaries for legislative affairs and public affairs and similar organizations in other government agencies. This activity includes two subordinate branches: (1) Disclosure Branch and (2) Public Affairs Branch.

(1) *Disclosure Branch.* Plans and monitors the Bureau's implementation of the Freedom of Information Act as amended in 1974 and the Privacy Act of 1974. Formulates policies and programs for the approval of the Assistant Director concerning the release of information required by the Freedom of Information and Privacy Acts. Ensures that sensitive items requiring intra- or interagency contact or explanation are brought to the attention of the Assistant Director. Keeps associate and assistant directors and key field officers informed to the extent necessary to fully carry out the requirements of the Freedom of Information and Privacy Acts. Receives and processes all requests for information under the Freedom of Information Act and makes the initial determination to comply with or deny requests. Maintains the Headquarters Reference Library.

(2) *Public Affairs Branch.* Develops, recommends, implements, and evaluates the Bureau's public and industry information policies and activities. Writes major speeches for Bureau officials and reviews and edits other speeches to ensure consistency with Bureau policy and professionalism in presentations by ATF managers. Prepares press releases, briefing papers, fact sheets, posters, and other materials for industry members and the public concerning ATF's responsibilities and accomplishments. Ensures that fact sheets and news releases are used to supplement major policy speeches of Bureau officials. Coordinates the preparation of public affairs materials with appropriate Bureau officials for ATF's participation in conferences, conventions, and other functions which require media coverage. Provides information to the Assistant Director concerning sensitive items which may require intra- or interagency contact or explanation.

16. Comptroller

Serves as principal assistant to the Director in planning and executing the support programs of the Bureau, including management analysis, financial management, data processing, communications and office automation, personnel management, administrative programs, and training, as well as a full range of laboratory and scientific services. Provides general supervision and policy guidance to the Director (Laboratory Services), and the chiefs of the administrative divisions. Participates jointly with the heads of other activities in the general management of the Bureau by ensuring coordination to accomplish Bureau objectives. The Headquarters Office of the Comptroller includes the Laboratory Services activity, the Management Analysis Staff and five divisions: (1) Administrative Programs Division; (2) Financial Management Division; (3) Information Services Division; (4) Personnel Division; and (5) Training Division.

a. *Management Analysis Staff.* Conducts and coordinates management, organizational and staffing studies and analyses, provides advisory service to management on functional and staffing matters, and assists in the formulation of policy pertaining to the organizational structure and lines of authority within the Bureau. Coordinates Bureau compliance with OMB Circular A-76 (Performance of Commercial Activities), OMB Circular A-123 (Internal Control Systems), and OMB Circular A-71 (Security of Federal Automated Information Systems). Coordinates and provides technical advice on the Office of the Comptroller's goals and objectives. As directed by the Comptroller, participates in special projects that involve determining the effectiveness or feasibility of existing or proposed Bureau plans, policies and program objectives; and assists in evaluating and recommending improvements in a broad range of Bureau program areas.

b. *Administrative Programs Division.* Develops, directs, coordinates and evaluates policies, programs and procedures to support Bureau activities in the areas of procurement and contracting, real and personal property management, paperwork management,

printing and distribution, emergency planning, safety and physical security and office management. Provides direct operational support in these areas to both Headquarters and field offices. The division consists of three branches: (1) Facilities Management Branch; (2) Paperwork and Distribution Management Branch; and (3) Procurement and Printing Management Branch.

(1) *Facilities Management Branch.* Plans, develops, coordinates, executes, and evaluates support programs in the areas of real and personal property management; building maintenance; vehicle and equipment utilization and repair; safety, physical security and emergency preparedness; the processing of administrative claims against the Bureau; and other administrative services. Develops policies, standards and procedures relating to the acquisition, renovation and release of office, parking and storage space, and assists Bureau managers in developing space utilization plans. Conducts studies as necessary to ensure that office space is utilized in a cost efficient and effective manner. Develops policies, standards and procedures for the utilization, control, and disposition of capitalized equipment, motor vehicles, furniture and furnishings, and certain noncapitalized equipment. Acquires office space and Government-owned vehicles and equipment necessary for Bureau operations, and refers commercial acquisition requirements to the Procurement and Printing Management Branch. Develops recordkeeping requirements for, and maintains official records of, real and personal property in accordance with GSA, Treasury Department and Bureau policy. Develops, coordinates, directs and evaluates the Bureau's physical security, emergency preparedness, identification media, energy conservation and environmental protection programs. Develops, coordinates, directs and evaluates the Bureau's accident, injury and fire prevention programs, including claims arising under the Federal Tort Claims, Small Claims, and Military Personnel and Civilian Employees' Claims Acts, and certain claims under the Claims Collection Act. Provides direct support for all Headquarters offices in the areas of mail management, building maintenance, equipment and vehicle maintenance, photocopying services, and the interoffice movement of records, documents, supplies, furniture, equipment and other materials.

(2) *Paperwork and Distribution Management Branch.* Plans, develops, directs, coordinates, and evaluates systems, policies, and procedures to meet the Bureau's paperwork management and publishing needs. Establishes procedures and standards for the preparation and coordination of proposed forms, directives, publications, and other printed materials necessary for the operation of the Bureau; reviews all items submitted for publication to ensure conformance with standards. Prepares Bureau-wide procedures to ensure the uniform preparation of internal memoranda and official correspondence. Establishes internal management controls relating to records and reports management and the acquisition of micrographics equipment. Develops and prepares justifications of the Bureau's information collection budget and advises management officials on its execution. Reviews and clears all public reporting and recordkeeping requirements through the Department and OMB. Represents the Bureau before the Department, other Government agencies, industry groups, and the general public on all matters relating to paperwork management activities. Develops, coordinates, directs, and evaluates a program for the distribution of all forms, documents, rulings, decisions, statistical releases, directives, and instructional material necessary for the operation of the Bureau.

(3) *Procurement and Printing Management Branch.* Develops, coordinates, directs, and evaluates the contracting and procurement programs of the Bureau. Develops procurement policy and procedures, and provides guidelines and consultative assistance for all Bureau procurement programs. Interprets various Federal, Treasury and Bureau regulations to ensure operational compliance with applicable laws and regulations. Responsible for centralized procurement of items for Bureau-wide use such as automobiles, ADP equipment and services, electronic communications equipment, investigative equipment and other complex equipment and services. Solicits, advertises or negotiates and awards all contracts and purchase orders. Performs periodic reviews of the procurement techniques and methods utilized in all operations. Provides Bureau representation of all Treasury and interdepartmental committees and study groups working toward solutions of Government-wide problems in contracting and procurement. Develops or recommends training programs and workshops, relating to procurement and printing operations, for field and Headquarters personnel. Develops, coordinates, directs, and evaluates a program for the printing of forms, documents, rulings, decisions, directives, and instructional and other materials necessary for the operation of the Bureau.

c. *Financial Management Division.* Develops, plans, coordinates, and evaluates the financial management and budget policies and programs of the Bureau. Develops the Bureau's budget formulation and presentation to the Department, OMB and the Congress. Conducts the Bureau's execution of the budget through issuance of allocations; monitors, analyzes, and provides recommendations on the Bureau's financial posture; and provides reports to the Department, OMB and the Congress on the execution of the Bureau's budget. Participates with the Office of the Director in developing the Bureau's long-range plan. Establishes procedures covering the accounting systems for appropriated funds and directs the budget. Advises the Office of the Director and all levels of management on matters concerning the budget and management of funds appropriated for the administration of the Bureau. The Division, under the direction of the Financial Manager, consists of (1) Internal Review Staff; (2) Accounting Branch; (3) Financial Systems Branch; and (4) Planning and Budget Branch.

(1) *Internal Review Staff.* The Internal Review Staff assists the Financial Manager in discharging his or her responsibilities under the Federal Managers' Financial Integrity Act (FMFIA) and Reform '88 initiatives. This includes performing FMFIA Section 2 (Internal Control) and Section 4 (Accounting System Compliance) reviews and auditing the Bureau's Cash Management program, Debt Collection program, OMB Circulars A-123 and 127, and the Financial Management Evaluation and Improvement program. Through continuous audit efforts, the Internal Review Staff provides the Financial Manager with a completely independent perspective of operations throughout the Financial Management Division. This assessment process includes evaluation of internal controls, development of audit plans based on internal control findings, performance of audits, analysis and evaluation of findings, development of corrective action recommendations, report preparation and presentation, and follow-up reviews.

(2) *Accounting Branch.* Provides advice to management on the development, installation and direction of the financial accounting program

covering the field and Headquarters operations of the Bureau. Directs the transportation and traffic program for the Bureau, advising and assisting managers and employees on travel reservations, ticketing, advances, regulations and all transportation of things. Serves as liaison between the Bureau and the staff of the Treasury Payroll and Personnel Information System, and is responsible for advising management and employees on matters concerning payroll distribution and withholdings. Advises in the formulation of policies, plans, systems and procedures to govern and continually improve the efficiency and effectiveness of the financial management of the Bureau. Interprets all Treasury, General Accounting Office, Office of Management and Budget, and General Services Administration regulations relevant to financial management. Ensures the accurate establishment and maintenance of proper accounting controls. Directs the audit and payment of vendor invoices assuring both compliance with the Prompt Payment Act and the legality of disbursement. Manages the cashiers function, and the resolution of employee losses for the Bureau.

(3) *Financial Systems Branch.* Plans, develops, directs, coordinates and evaluates systems to meet the Bureau's financial management requirements. Develops, installs and maintains the Bureau's financial accounting systems to produce timely and accurate data for budgetary and accounting management purposes. Maintains internal control and physical security to insure the safety and accuracy of the Bureau's financial accounting system. Acts as a liaison between automated data processing personnel and users to develop automated systems related to the financial management area. Writes, updates, and coordinates the issuance of all ATF financial management orders. Develops all directives, user manuals, policies, procedures and other pertinent documentation for all financial systems, automated or manual. Oversees the data input and control of information used to update various financial management systems. Advises and assists management and employees of the Financial Management Division on all system requirements and procedural changes. Interprets all Treasury, Government Accounting Office, and Office of Management and Budget regulations and initiates the policy changes relevant to financial management.

(4) *Planning and Budget Branch.* Prescribes the procedures and directs the formulation, presentation, and execution of the Bureau's budget. This includes allocation of funds, continual analyses of the Bureau's financial posture and monitoring of those funds, budget integration of the Bureau's short- and long-term program planning, and reprogramming and reapportioning of funds. Initiates supplementals and amendments to the Bureau's budget based on program requirements. Maintains the Bureau's budget historical files and workload measurements. Maintains a position management system which supports the orderly allocation of human resources through position authorization and full-time equivalent ceilings. Operates the Bureau's headquarters imprest fund. Prepares the formal budget submissions to the Department, OMB and the Congress for approval. Prepares briefings for top management on all budget presentations for formal hearings and annual/mid-year reviews of allocations.

d. *Information Services Division.* Designs, develops, implements and maintains automated systems to meet the Bureau's data processing, communications and office automation requirements. Provides direct assistance to all activities, as required, in assessing their automated information requirements, determining the feasibility of automation, selecting appropriate hardware and software, and ensuring reliable and cost efficient operation. Maintains and operates centralized ADP and communications systems within the Bureau. Maintains familiarity with current technology in the data processing, office automation and communications fields to assist management in improving productivity and reducing costs. Serves as the Bureau's coordinator with the Department, other Treasury bureaus and outside organizations on data processing, communications and office automation matters. The division consists of three branches: (1) ADP Operations Branch; (2) Communications Operations Branch; and (3) Systems and Design Branch.

(1) *ADP Operations Branch.* Plans and performs systems programming for new or modified Bureau software systems. Performs applications software maintenance programming for ongoing systems. Reviews all programming operations to ensure compliance with current Bureau standards and procedures. Provides the coordination and overview required for the maintenance of all Bureau data processing and office automation equipment. Ensures that equipment is adequately maintained, and advises management of both actual and anticipated problems. Provides in-house data entry service when required for batch-processed systems. Writes data entry and data transmittal procedures and instructions. Establishes adequate controls to ensure the integrity of input data, and to guard against the loss of data. Operates all Bureau centralized mainframe equipment associated with data processing and office automation functions.

(2) *Communications Operations Branch.* Manages the Bureau's wireline and wireless communication operations, which consist of (1) services, equipment, and facilities used for transmitting and receiving voice, data and other message information by wire, radio, visual, or other electrical or electromagnetic transmission modes; and (2) systems and equipment for wireline and wireless communications, and circuitry for telephone, telegraph, facsimile, video, and other communications operations. Maintains and operates a centralized Communications Center at Headquarters which provides Bureau-wide tactical support, record communications support and access to the Treasury Enforcement Communciations System (TECS), the National Crime Information Center (NCIC), and other law enforcement information systems as necessary. Provides coordination for Bureau telephone installations. Conducts site surveys for radio transmission requirements.

(3) *Systems and Design Branch.* Reviews manual operations of the Bureau as requested by appropriate management officials. Designs automated systems to perform the manual functions. Studies current automated systems to provide specifications for major modifications. Engineers the design, oversees the development and technical aspects of acquisition, and prepares the installation plans for Bureau data and voice systems. Evaluates proposed and existing automated information requirements of the Bureau, and designs and recommends appropriate database management systems and office automation configurations to meet these needs. Engineers and evaluates data network designs and configurations. Designs adequate instructions for both Division and user level personnel. Ensures that appropriate user level personnel are trained during the installation of new and modified systems. Establishes the standards for systems acceptability tests, and ensures that all sysstems are adequately tested.

Ensures that all systems have adequate safeguards for the integrity and security of data storage, reporting and transmission. Provides liaison with the Department, other Treasury bureaus, and outside organizations on matters relating to the design and implementation of automatic data processing, communications and office automation systems.

e. *Personnel Division.* Plans, directs and oversees the development, coordination and evaluation of personnel policies and programs for the Bureau. Provides supervision over personnel staff and operating programs for the Bureau, including: performance management, recruitment and staffing, classification and position management, employee and labor management relations, personnel management evaluation, and the automated personnel management system (PERMITS). Provides direct assistance and advice on personnel management matters to Bureau executives and managers. Directs and coordinates the Bureau's personnel management programs and the preparation of reports, correspondence and other documents with the Office of Personnel Management (OPM), the Department of the Treasury, other agencies, and the general public. The Division consists of three branches: (1) Employee and Labor Relations Branch; (2) Employment Branch; and (3) Position Management Branch.

(1) *Employee and Labor Relations Branch.* Develops and coordinates policies, procedures and instructions and is responsible for providing direction, guidance, training and advice to Bureau managers and supervisors on labor management relations, employee management relations, employee conduct and discipline, appeals and grievances, employee recognition and performance, hours of work and pay, leave, and other employee services. Responsible for liaison, consultation and negotiations with unions. Reviews, evaluates, interprets and disseminates information in the employee and labor management relations areas. Acts as liaison between the Bureau, the Department of the Treasury, OPM, the Federal Labor Relations Authority, the Merit Systems Protection Board, the Department of Labor and other Federal agencies on employee and labor management relations matters.

(2) *Employment Branch.* Develops and coordinates policies, procedures and instructions and is responsible for providing direction, guidance, training and advice to all Bureau managers and supervisors on recruitment, selection, performance management, placement, appointment, career status, merit promotion, details, veteran's preference, orientation, placement follow-up, employment aspects of reductions-in-force, separation, and systems management of the PERMITS automated personnel system. Coordinates with Bureau management the preparation of employment PERMITS reports to facilitate their personnel management responsibilities. Develops, coordinates and provides advice and assistance to managers and supervisors on occupation and performance guides, including qualification and performance standards, qualification evaluation and key qualification rating criteria, and qualification and training selection criteria. Develops and coordinates policies and procedures and provides advice to management on participation on interagency boards. Reviews and advises Bureau managers on staffing and budgetary proposals relating to recruitment, selection and placement of employees. When appropriate, acts as liaison between the Bureau, the Department of the Treasury, the OPM, other Federal agencies, the public and other organizations on recruitment and employment programs.

(3) *Position Management Branch.* Develops and coordinates policies, procedures, guides and program instructions and is responsible for providing advice, guidance, training and assistance to all Bureau managers and supervisors on position classification, position management, and occupational standards programs. Advises Bureau management on organizational structuring, job design, assignment practices and other aspects of position management. Develops and maintains the position side of the PERMITS automated personnel management system, and coordinates with the Financial Management Division and management, the development of reports to assist them in tracking positions to facilitate their position management responsibilities. Reviews and advises managers on classification and position management implications of budgetary and financial planning with respect to proposed grade structure changes and reorganizations, as justified by available workload data, in conformance with existing classification and position management guides and standards. Develops and coordinates Bureau policies and procedures, provides advice and guidance and leads or conducts reviews for the Bureau's Personnel Management Evaluation (PME) program and is responsible for monitoring intra-Bureau, PME and OPM Interagency Assessment Visits (IAVs). Develops policies, procedures, and instructions, and advises management on pay administration matters with respect to the Fair Labor Standards Act, merit pay determinations, grade and pay retention and back pay claims when classification issues are involved. Has functional responsibility for reduction-in-force activities by establishing and maintaining competitive levels and advising management on reorganizations, abolishment of positions, and transfers of functions involving classification actions and issues. Reviews, coordinates and makes recommendations on OPM and Department of Treasury classification and qualification standards. Performs such services and provides advice to Bureau management on the preparation of Senior Executive Service (SES) position descriptions and evaluations for review and approval by the Department, Bureau-wide occupational studies and justification and development of standard position descriptions.

Has final Bureau authority to adjudicate classification appeals through the GM/GS-15 grade level. When appropriate, acts as Bureau liaison with the OPM, Department of Treasury and other Federal agencies on classification and position management programs.

f. *Training Division.* Serves as a resource for all training activities throughout the Bureau. Fosters a collaborative approach to training by including all involved officers and individuals in the development, delivery and evaluation of specific training programs. Assists in ensuring that ATF's managment/values and goals are supported and reinforced through training. Involves all ATF functions in the preparation of integrated fiscal year training budgets and plans. Uses a project/team management approach in helping ATF program offices (a) determine their needs and (b) decide to what extent, and how, training can meet those needs. Oversees that ATF Training System, which uses a systems approach in analyzing training needs and developing, conducting and evaluating training programs. Provides organization development and team building programs for ATF managers and their staffs. The Division consists of two branches: (1) Career Development Branch and (2) Technical Training Branch.

(1) *Career Development Branch.* Develops, deliver and evaluates management, supervisory and other skills training programs and

instructional materials based on analyses of needs. Ensure that instructors are trained and prepared to teach courses or lesson plans assigned by program offices. Maintains out-bureau training, conducts annual training needs surveys, prepares planning forecasts, evaluates contractual services and ensures that the integrity of training legislation is upheld and currency on proposed legislation is maintained. Coordinates and directs proper training reporting procedures with Headquarters and field personnel. Tracks training costs and accounts for training related expenditures. Maintains a training information file, which includes all reported instances of training listed by participant and course title. Coordinates scheduling of directorate-sponsored/branch-delivered training and arranges for acquisition and distribution of supplies, materials, equipment and training facilities in support of training. Maintains liaison with other government and nongovernment agencies. Evaluates individual and assembled training courses and recommends substitutons or revisions when appropriate. Provides audiovisual support for courses and appropriate nontraining applications. Prepares facilities needed for the use of the media and provides instruction in the use of the equipment and materials.

(2) *Technical Training Branch.* Plans, develops, coordinates, conducts, and evaluates technical training programs. These programs are directly related to the needs of agents and inspectors and selected personnel from other Federal, State and local agencies. Formulates training schedules in concurrence with Bureau management. Applies the ATF Training System approach in the development, design, or redesign of all technical training programs. Designs appropriate audiovisual support material. Provides onsite management of technical training activities at the Federal Law Enforcement Training center. Develops and forms instructor teams from functional area specialists. Establishes and enforces standards for instructor and student performance and conduct during training. Evaluates student and instructor performance. Coordinates activities with the Federal Law Enforcement Training Center, the Career Development Branch and other offices within ATF. Provides instructors and developers with technical course material.

g. *Director (Laboratory Services).* Plans, evaluates and coordinates the Bureau's laboratory-based scientific services programs. Ensures that programs are consistent with and fully supportive of program responsibilities relating to alcohol and tobacco products, firearms, arson, explosives and cigarette smuggling, and revenue protection. Develops, plans, directs, coordinates and evaluates scientific support services programs, policies, procedures and standards. Participates in the development of budgets for the laboratory system. Directs the development of new technologies and expertise to provide the Bureau with improved laboratory service capabilities. Assists other law enforcement agencies and the scientific community through specal training programs, visits and publications. Ensures that professional staffs of the laboratories maintain a high level of scientific and technical proficiency. Supervises the laboratories in the National Laboratory Center [Alcohol and Tobacco Laboratory, Forensic Science Laboratory and Special Projects Laboratory], the San Francisco Laboratory Center and the Atlanta Field Laboratory.

(1) *Alcohol and Tobacco Laboratory.* Develops and utilizes chemical, physical and instrumental analyses to regulate commodities affected by the laws and regulations administered by the Bureau, particularly as they relate to alcohol, beverage alcohol and tobacco products, excise tax clasifications, and consumer protection. Examines Imported wines, all imported and domestic distilled spirits products, and all beers to verify alcoholic proof, determine the presence of additives or adulterants, or otherwise identify product content. Determines scientific bases for technical decisions of the Bureau, and provides expert testimony and advice as required.

(2) *Forensic Science Laboratory.* Serves as the Bureau's center for forensic research and development and the examination of complex or unusual physical evidence which is usually related to firearms, arson, explosives and cigarette smuggling investigations. Devises and implements improved analytical methods in forensic speciality areas, and conducts training courses and workshops for forensic scientists from ATF and other Federal, State and local laboratories. Participates in Bureau training courses for law enforcement personnel. As requried, assists in the collection of evidence at crime scenes related to ATF investigations. Provides expert testimony on the basis of laboratory examinations, and provides technical advice to other ATF laboratories, Bureau managers and employees, and other government agencies.

(3) *Special Projects Laboratory.* Performs a broad range of developmental, analytical, monitoring and review activities on behalf of the Director (Laboratory Services) and other components of the ATF laboratory system. Evaluates equipment and analytical methods to assess their suitability for laboratory operations and to apprise the various chiefs of the current state-of-the-art. Conducts limited-term projects to develop standardized analytical methodology, automated procedure or special techniques for identified law enforcement and regulatory needs. Monitors quality assurance in the laboratory system through periodic reviews of case files, "blind" testing, and feedback from users of laboratory services. Collects, stores and disseminates scientific information, management information, and productivity data needed to support operations and to prepare budget justifications and other planning documents.

17. Associate Director (law enforcement)

Serves as principal assistant to the Director in all matters of law enforcement relating to firearms, explosives/arson, alcohol and tobacco laws enforced by the Bureau. Directly supervises the Headquarters Office of Law Enforcement (LE) and special agents in charge. Develops and implements nationwide policies and programs for the Office of Law Enforcement. Assigns manpower and resources to the various Headquarters and field offices, taking into consideration the fluctuating requirements and changing conditions affecting law enforcement operations. With the concurrence of the Director and Departmental officials (as required), is responsible for final decisions on personnel actions affecting Law Enforcement personnel. The Headquarters office consists of a Planning and Analysis Staff and three divisions: (1) Explosives Division; (2) Firearms Division; and (3) Special Operations Divisions.

a. *Planning and Analysis Staff.* Performs a variety of special management projects involving planning, research and development of policies, procedures and operational programs. Presents and justifies LE's annual budget request. Oversees and manages funds appropriated to Law Enforcement. Performs short- and long-range planning for LE on a national level, as well as strategic planning and manpower and productivity studies.

Makes recommendations regarding staffing and office openings and closings, administers the seized property function, and conducts operational reviews of Headquarters and field offices. Prepares directives and procedural instruction relating to its functions. Manager the Law Enforcement portion of the Bureau's directives system, provides assistance on preparation of directives, reviews for technical accuracy, evaluates procedures for compliance with law Enforcement policy and coordinates with other Bureau offices. Evaluates training activities for all Law Enforcement personnel, including in-house training, out-Bureau training and roll call training for Headquarters and field personnel. Coordinates Law Enforcement personnel actions with the Personnel Division, including the career plan, employee developmental assignments, office of preference and hardship transfer matters. Maintains coordination with the Office of Congressional and Media affairs and liaison activities with other Federal, State and local enforcement agencies, representatives of local and foreign governments and with business executives, managers, attorneys and other citizen representatives of the private sector. Coordinates Law Enforcement's support requiements with the Office of the Comptroller in the areas of space management, procurement, and conference arrangements, and other special projects of a complex and/or sensitive nature. The Staff consists of two branches: (1) Resources Branch; and (2) Programs and Procedures Branch.

(1) *Resources Branch.* Responsible for a variety of special management projects involving planning, research, and development of policies, procedures, and programs that relate directly to formulating and executing LE resource requirements and allocations as follows: organizes the formulation, presentation, and justification of LE's annual budget requrest, and supplemental budget requests; exercises management, oversight, and execution of funds appropriated to LE; exercises management and oversight of LE staffing; prepares long- and short-range resource planning on a national level to include the development of financial and staffing models; exercises oversight of procurement function and office space allocations; reviews and assists in personnel actions, hardship request responses, office of preference matters, and office openings or closings; and exercises oversight on all other matters relating to LE resources.

(2) *Programs and Procedures Branch.* Responsible for a variety of special management projects involving planning, research and development of policies, procedures, and programs that relate directly to supporting LE field offices and operations on a national basis. The specifics of these functions are as follows: exercises overall responsibility for the development, refining, and monitoring of the Crime Impact Program (CIP), the Minority Impact Program (MIP), and the Law Enforcement training function; develops, refines, and conducts the Headquarters Operations Review Program and ensures implementation of the OMB A-123 internal control system; exercises oversight, responsibility, and authority for the LE seized property function in support of field operations; coordinates U.S. Secret Service requests for support; exercises responsibility for writing and editing of ATF Orders, and updating of the directives system; conducts special study research and then prepares reports in support of field operations; conducts long- and short-range planning in conjunction with development of field support (i.e., crime and population shifts and trends) which may affect LE programs and procedures; reviews and assists in personnel actions within LE; and conducts other miscellaneous assignments relating to the field support function.

b. *Explosives Division.* Manages the explosives enforcement program. Monitors all active explosives and arson investigations and provides operational support and technical information to special agents in charge in all enforcement matters within program areas. Informs the Associate Director (Law Enforcement), other division chiefs and appropriate field managers of all major operational matters within its program area, particularly those significant or sensitive situations and matters likely to have substantial impact or to attract widespread national attention. Coordinates, supports and monitors programs and projects to ensure uniform application and interpretations of the law and Bureau enforcement policy. Maintains continuing contact with field managers, monitors and evaluates case and investigative progress reports, and prepares reports and recommendations regarding enforcement programs. Conducts a continuing evaluation of existing programs and procedures, and is responsible for the drafting of official directives and procedural instructions related to its function. Receives, analyzes, evaluates, maintains and disseminates information regarding stolen and recovered explosives and explosives/arson incidents. Prepares the Bureau's annual report on explosives incidents. Coordinates jurisdictional and procedural matters relating to field enforcement activities with other law enforcement or governmental entities, and prepares information for the Assistant Director (Congressional and Media Affairs). The Division consists of three branches: (1) Arson Enforcement Branch; (2) Explosives Enforcement Branch; and (3) Explosives Technology Branch.

(1) *Arson Enforcement Branch.* Carries on the Division's responsibilities relating to arson matters through operational program development, management direction and resource coordination. Monitors significant interdistrict, national or international arson investigations. Reviews and evaluates arson incidents, investigations and prosecutions. Conducts field visits and surveys to discover local, regional or national trends. Serves as the coordination point for districts involved in the Arson Task Force, handles requests for electronic surveillance requiring Headquarters or Justice Department approval, directs or participates in major investigations when so directed by the Associate Director (Law Enforcement), and maintains factual data which may bear upon a necessity for renegotiation of jurisdictional responsibilities. Coordinates external liaison with other Federal, State and local agencies and appropriate segments of private industry. Drafts new and revised Bureau directives, forms, etc., relating to the arson program area. Provides intelligence support to special agents in the field relative to specific arson investigations, as well as to Headquarters managers and planners regarding long-term trends. Has overall responsibility for all training falling within program area.

(2) *Explosives Enforcement Branch.* Carries out the Division's responsibilities relating to explosives matters through operational program development, direction, coordination, monitoring and needs identification. Monitors significant interdistrict, national or international explosives investigations, and investigations relating to the Stolen Explosives and Recoveries Project (SEAR) and domestic traffic in explosives. Reviews and evaluates explosives incidents, accidental explosions, stolen and recovered explosives, investigations and prosecutions. Manages and controls the National Response Teams. Provides operational support through the

Explosives Incident System (EXIS) and the International Explosives Incident System (IEXIS) projects. Conducts field visits and surveys to discovery local, regional or national trends. Handles requests for electronic surveillance requiring Headquarters or Justice Department approval, reviews applications for relief, provides training for the National Response Teams, directs or participates in major investigations when so directed by the Associate Director (Law Enforcement); and maintains factual data which may bear upon a necessity for renegotiation of jurisdictional responsibilities. Coordinates external liaison with other Federal, State and local agencies and appropriate segments of private industry. Drafts new and revised Bureau directives, forms, etc., relating to the explosives program area. Provides intelligence support to special agents in the field relative to specific explosives investigations, as well as to Headquarters managers and planners regarding long-term trends. Has overall responsibility for all training falling within program areas.

(3) *Explosives Technology Branch.* Provides technical assistance and support regarding classification and device determinations relating to explosives and arson under the Explosives and Gun Control Acts, including explosive-actuated tools and devices. Establishes, plans and conducts test of explosives, incendiaries, pyrotechnics, destructive devices and implements of war resulting from industry and/or government agency requests. Investigates malicious and accidental fire or explosives-related incidents including onsite assistance for ATF National Response teams. Supports enforcement operations in the destruction of explosives and hazardous materials. Provides technical case preparation and expert testimony for Federal and State criminal and civil litigation. Plans, prepares and conducts training, demonstrations, seminars and conferences for ATF and other agencies and organizations. Maintains a technical library and collection of inert exemplar devices, explosives, and explosives materials. Provides technical reference and explosives tracing services for Federal, State and local law enforcement agencies.

c. *Firearms Division.* Manages the firearms enforcement program and monitors all active firearms investigations. Provides operational support and technical information to special agents in charge in all matters relating to the enforcement of firearms statutes within the jurisdiction of the Bureau. Informs the Associate Director (Law Enforcement) and other division chiefs on all major operational matters, particularly those significant or sensitive matters likely to have significant impact or to attract widespread national attention. Coordinates, supports and monitors the execution of special enforcement projects, such as Interstate Firearms Theft and International Traffic in Arms (ITAR), to ensure uniform interpretation of the law; prepare recommendations of firearms enforcement programs and policy matters through continuous contact with field supervisors, and reviews and evaluates case and investigative progress reports. Drafts directives and procedural instructions relaterd to its functions and coordinates jurisdictional and procedural matters relating to field enforcement activities with other law enforcement agencies. Reviews applications for relief from disability, assigning them to the field for further investigation where necessary, and eventually recommending approval or denial of such applications. Provides and develops specialized training courses on firearms-related matters to ATF personnel and State and local officials. The Division consists of three branches: (1) Firearms Enforcement Branch; (2) Firearms Technology Branch; and (3) Firearms Tracing Branch.

(1) *Firearms Enforcement Branch.* Carries out the Division's firearms enforcement responsibilities through operational program development, direction, coordination, monitoring and needs identification. Monitors significant interdistrict, national and international investigations. Informs interested managers of all significant matters involving firearms responsibilities, and prepares reports as required or requested in connection with ATF's firearms enforcement program. Drafts official directives and procedural instructions related to firearms enforcement. Monitors and coordinates all firearms enforcement matters having international implications or characteristics through the ITAR project and coordinates activities with other agencies having a jurisdictional interest in these matters. Monitors, on a national level, and makes recommendations to the Associate Director (Law Enforcement), on all active investigations concerning applications for relief from Federal firearms and explosives disabilities. Reviews investigative reports submitted from the field, and determines the merits of the application. Based on the evidence contained in the reports, recommends to the Director whether relief should be granted or denied. Serves as a specialized point of contact for all the enforcement districts, field offices, and Headquarters by providing technical information on the Bureau's relief program. Recommends new and revised policies as a result of continuous contact with the field supervisors and the review and evaluation of investigative reports concerning relief. Responds, as a liaison, to other entities within the Bureau, other Government agencies, law enforcement agencies of State and local governments, United States attorneys, State and local prosecutors, private attorneys, Congress, and the general public concerning the procedural and administrative aspects of the Bureau's relief program. Serves the Director and the Associate Director (Law Enforcement) as the Bureau's expert concerning reliefs from disability.

(2) *Firearms Technology Branch.* Tests and evaluates firearms, ammunition and implements of war for classification under the Gun Control and Arms Export Control Act; establishes factoring criteria for importation of firearms, attends congressional hearings on firearms legislation, and furnishes related data to the Treasury Department and the Office of Management and Budget. Provides technical advice to State and local authorities on firearms legislation and its implementation; maintains an extensive firearms collection as well as a technical reference library; responds to inquiries on technical firearms matters; and approves or denies variances from statutory marking requirements for firearms and importation of parts. Prepares material for training, drafting directives and procedural instructions related to its conducting firearm demonstrations, seminars and training courses, and provides expert witness testimony in Federal and State firearms-related court proceedings.

(3) *Firearms Tracing Branch.* Provides assistance to Federal, State and local government agencies in their fight against crimes of violence by maintaining the capability to trace the origin and ownership of recovered crime guns. Maintains a reference library to identify firearms, firearms manufacturers and importers. Contacts manufacturers (foreign and domestic) and importers to obtain the disposition of firearms; contacts wholesale and/or retail dealers for dispositions, and confirms accuracy and extent of trace, and communicates results of trace, to the requestor. Identifies trends and trafficking patterns which may require investigation or revision of enforcement programs, procedures, etc. Maintains

records of all firearms traces, through discontinued businesses at the records center, and through ATF regional technical services branches and posts of duty, to locate hard-to-find or out-of-business firemars dealers. Originates traces of firearms for foreign members of INTERPOL and initiates inquiries of foreign firearms dealers through INTERPOL facilities. Initiates inquiries through various military security units when the guns traced are sold through rod and gun clubs worldwide. Drafts directives and procedural instructions related to its functions. Receives, catalogs, stores and maintains out-of-business (OOB) firearms licensee records. Reviews incoming files to remove extraneous material, prepares for cataloging and microfilming, and verifies microfilm records to paper originals. Performs searches of the bound ledgers, ATF Forms 4473 (Firearms Transaction Record), and microfilm records to provide gun trace information to Federal, State and local enforcement agencies. Performs a search of the OOB records and as necessary, testifies in court as to content of specific records, when requested by the Office of Congressional and Media Affairs or any law enforcement agency. Prepares and forwards master copies of microfilmed documents for storage (safekeeping) in the Federal Records Center and maintains accountability records.

d. *Special Operations Division.* Manages national support programs to Law Enforcement field activities in the specific areas of criminal investigative intelligence, technical surveillance, polygraph examinations, investigative tape enhancements, airborne operations, forensic hypnosis, emergency funds, and undercover operations. Monitors and coordinates organized crime, alcohol and tobacco enforcement efforts nationally, manages witness protection programs, and maintains and disseminates investigative intelligence/information regarding individuals, groups and activities subject to the Bureau's enforcement jurisdiction. Maintains liaison with EPIC and INTERPOL. Directs and coordinates special operations such as the Presidential Task Forces and Southwest Border Project and coordinates and monitors approved investigations conducted outside ATF's jurisdiction. Controls and coordinates the Law Enforcement Management Information System (LEMIS) and related information systems, and coordinates and manages the Treasury Enforcement Communications System. The Division consists of four branches: (1) Intelligence Branch; 92) Special Programs Branch; (3) Systems and Records Branch; and (4) Tactical Support Branch.

(1) *Intelligence Branch.* Provides informational support to both Law Enforcement management and field personnel through the collection, evaluation, analysis, and dissemination of criminal intelligence as it relates to individuals involved with violent criminal/terrorist groups, or individuals violating laws within the Bureau's jurisdiction. Conducts indepth analyses on criminal investigations utilizing the computerized Crime Analysis System (CAS), to identify criminal relationships, organizational structures, commodity flows, and related activities. As a result of the analyses, develops and disseminates reports and charts graphically depicting criminal associations (link diagrams), sequence of events (VIA); and, commodity flows (firearms, explosives, etc.). Handles all classified documents for the Bureau. Complies and disseminates periodic Intelligence Bulletins. Maintains liaison with other Federal, State, local and international criminal intelligence agencies. Drafts directives and procedural instructions relative to intelligence functions, computer systems utilized, and analytical investigation methods.

(2) *Special Programs Branch.* Responsible for the national direction, control, monitoring, and operational coordination of all investigations (criminal, civil, or administrative) involving the alcohol (illicit and legal) and tobacco enforcement programs, including the continual development and modification of these programs based upon changing resource allocations, crime patterns, or trends. Coordinates and monitors the Bureau's participation in the Department of Justice's Strike Forces, Presidential Organized Crime Drug Enforcement Task Forces, and the Witness Security Program for informants/witnesses having assisted ATF with information resulting in threats on their lives. Maintains the emergency expense fund. Informs Bureau and Departmental officials of significant matters, trends and other appropriate aspects in the areas enumerated. Drafts directives and procedural instructions relating to the Branch's functions. Maintains a file inventory of specialized undercover agents for assignments as requested on a nationwide basis, develops background identities with supporting documentation for special undercover duties and coordinates the assignment of personnel with field supervisors.

(3) *Systems and Records Branch.* Accumulates and disseminates systemized intelligence information through the use of the Treasury Enforcement Communications System (TECS), a computer record keeping system which provides inteligence information through instantaneous retrieval of data on current and former investigations conducted by the Bureau and other participating agencies. Serves as the direct access point for intelligence information available from the National Crime Information Center (NCIC), other enforcement agencies, and through the National Law Enforcement Telecommunications System (NLETS). Monitors and controls LEMIS and provides trend analysis and evaluative information on manpower utilization, resource allocation and employee productivity, required by management for effective direction of enforcement operations. Maintains all criminal investigative files for intelligence, operational, and reference purposes, as well as electronic surveillance records and related statistics. Drafts directives and procedural instructions relating to its functions. Reviews Freedom of Information Act (FOIA) and Privacy Act requests involving active or closed investigations.

(4) *Tactical Support Branch.* Provides assistance to Law Enforcement field activities in the areas of specialized undercover support, airborne operations, technical assistance related to electronic surveillance techniques and investigative tape enhancement. Coordinates interdistrict activities by assigning specalized undercover agents, providing technical equipment expertise, and distributing and maintaining technical equipment resources. Coordinates the Bureau's use of aircraft for enforcement purposes, and assigns trained agent/pilots to field offices as needed. Maintains records relating to airborne operations; tests, approves and distributes technical investigative aids and equipment; monitors onsite use of the equipment inventory of each district to determine adequacy, frequency of use, and replacement requirements. Operates the polygraph section, audio-engineering section and forensic hypnosis operations. Drafts directives and procedural instructions related to its functions.

18. Associate Director (Compliance Operations)

Serves as principal assistant to the Director in the management of Compliance Operations functions. Directs and supervises all activities relating to the administration of internal

revenue laws concerning the production, processing, distribution and use of beverage alcohol, industrial alcohol, tobacco and related products. Enforces provisions of the Federal Alcohol Administration (FAA) Act relating to consumer protection and trade practices in the beverage alcohol field. Regulates the firearms and explosives industries by controlling the issuance of Federal operating licenses and permits and reviewing business practices used by the industries. Develops plans, programs and procedures and allocates resources to meet these responsibilities, and adjusts work priorities to meet changing conditions. Coordinates the development and implementation of Compliance Operations recruiting and training programs to maintain an adequately staffed, high-quality work force. Directs and supervises the work of Compliance Operations personnel. The Headquarters office consists of a Tobacco Advisor, an International Liaison Officer, the Program Planning and Analysis Staff, and three divisions: Firearms and Explosives Division; Industry Compliance Division; and Regulations and Procedures Division.

a. *Tobacco Advisor.* Advises the Associate Director (Compliance Operations), staff, and field officials on important technical, policy, and procedural matters relating to tobacco. Serves as the principal point of contact on tobacco tax matters for tobacco industry and Government officials, and represents the Bureau at meetings of such officials. Participates in decisions and actions of the Bureau in matters relating to tobacco; reviews important outgoing correspondence; appraises existing or proposed practices and procedures; and advises as to the need for and evaluates new or amended regulations and rulings.

b. *International Liaison Officer.* Advises the Associate Director (Compliance Operations), staff and field officials on policy and procedural matters relating to international beverage alcohol trade. Provides expert advice to U.S. Government agencies requesting Bureau technical support in trade negotiations. Serves as principal point of contact with other U.S. Government agencies, foreign governments, and domestic and foreign industry members on issues relating to the marketing of beverage alcohol. Represents the Bureau and the U.S. Government, both in the U.S. and abroad, in governmental committees and in general meetings and conventions on beverage alcohol. Participates in decisions and actions of the Bureau and reviews papers formulating Bureau policy and legislative and regulatory proposals impacting international beverage alcohol trade to insure that these initiatives accurately reflect U.S. policy.

c. *Program Planning and Analysis Staff.* Plans, evaluates, and reviews Compliance Operations field programs. Develops, maintains, and operates the Compliance Operations segment of the Bureau's strategic planning system. Serves as principal liaison with the Office of the Director and with comparable activities in other public and private organizations. Conducts and obtains forecasts of likely developments affecting regulated industires and social and legal environments. Prepares long-, mid- and short-range plans for Compliance Operations and ensures that those plans are integrated with the Bureau's overall requirements. Monitors regional and Bureau Headquarters activities designed to achieve the plan elements, and prepares and distributes all plan and program evaluation materials for those activities. Serves as principal liaison with the Office of Internal Affairs in evaluation studies, and provides basic operational support and integration to interregional activities. Reviews Compliance Operations programs and activities to determine effectiveness and efficiency of such programs and activities. Monitors and coordinates the establishment and maintenance of systems of internal controls. Serves as principal liaison between Compliance Operations and the Office of the Comptroller involving internal control matters. Prepares budget requests for the Office of Compliance Operations. Maintains necessary systems to ensure that the budget requests are properly prepared and that the Office of Compliance Operations is functioning within its budget constraints throughout the year. Establishes, maintains and monitors Compliance Operations personnel authorizations and on-board staffing. Develops, plans, implements, and evaluates Compliance Operations technical training programs, and selects and evaluates the effectiveness of instructors. Provides office automation support and guidance to all Compliance Operations offices; serves as Compliance Operations liaison with the Treasury Department's information systems offices and the Bureau's Information Services Division. Provides management information system services to all Compliance Operations offices, and manages office automation systems for Compliance Operations Headquarters offices.

d. Reserved.

e. *Firearms and Explosives Division.* Plans, develops, coordinates and evaluates policies, programs, systems and procedures necessary to provide for the regulation of the firearms and explosives industries, as required by the Gun Control Act of 1968, as amended; the Arms Export Control Act of 1976; Title XI of the Organized Crime Control Act of 1970; and the regulation of commerce in National Firearms Act (NFA) firearms. Develops and amends regulations to implement legislation, to accommodate technological changes or trends, or to increase the efficiency or effectiveness of Bureau regulatory programs. Prepares and coordinates the issuance of appropriate documents setting forth new or amended regulations. Plans, develops and issues internal procedures and public use forms to implement laws and regulations relating to the firearms and explosives industry. Compiles, publishes and revises annually lists of published ordinances for firearms. Prepares and publishes industry circulars, official rulings and explanatory booklets relating to firearms and explosives laws and regulations. Processes license and permit applications and performs related functions to regulate commerce in firearms, ammunition, implements of war, and explosive materials; maintains the National Firearms Registration and Transfer Record; advises and provides liaison with industry, government and local law enforcement representatives on firearms and explosives matters. Coordinates preparatioin of the Division's budget and other management data, various statistical reports, and briefing materials as requested by other activities. The Division consists of three branches: (1) Firearms and Explosives Imports Branch; (2) Firearms and Explosives Operations Branch; and (3) National Firearms Act Branch.

(1) *Firearms and Explosives Imports Branch.* Administers the import provisions of the Gun Control Act of 1968 as amended, the National Firearms Act as amended by Title II of the Gun Control Act, and the Arms Export Control Act (AECA) of 1976. Processes applications to import firearms, ammunition, and implements of war. Processes applications to register as importers of U.S. Munitions Import List articles under the AECA. Processes international import certificates to certify to foreign governments as to the legality of importation of articles on the U.S. Munitions Import List. Provides technical advice and assistance involving importations to firearms, explosives, and munitions importers,

and the general public. Maintains records of importations. Reviews reports of release and receipt of imported articles and prepares statistical reports relating to imported articles. Monitors import transactions, initiates action to correct technical violations, and refers apparent willful violations to the appropriate office for investigation. Furnishes certifications and expert testimony regarding import matters as needed in criminal prosecutions and civil cases. Maintains liaison with importers, other ATF offices, U.S. Customs Service, Department of Defense, Department of State, Department of Commerce, and other Federal and State agencies with respect to import matters.

(2) *Firearms and Explosive Operations Branch.* Exercises nationwide regulatory authority in matters affecting the firearms and explosives industries. Coordinates national investigation on recalls of firearms illegally introduced into interstate commerce. Has responsibility for the development of regulations and amended regulations to implement legislation, to accommodate technological changes or trends, or to increase the efficiency or effectiveness of Bureau programs. Prepares and coordinates the issuance of appropriate documents setting forth new or amended regulations. Develops public use forms and explanatory booklets to implement laws and regulations. Provides information in these areas to current and prospective industry members and to the general public. Responds to Congressional inquiries regarding the regulation of the firearms and explosives industries. Supplies information and advice to regional offices on technical and procedural firearms and explosives matters, consulting as necessary with the office of Law Enforcement and Chief Counsel. Serves on the Firearms Classification Panel as the representative of Compliance Operations. Monitors regional firearms and explosives operations. Provides explosives safety equipment and training teo all field offices. Compiles, publishes and annually revises lists of published ordinances for firearms, curios and relics. Provides information and advice to explosives licensees and permittees regarding: classification of propellant and explosive-actuated tools and devices; variances in magazine construction and the safe storage of explosive materials; and acts on requests for variances from the requirements or regulations. Maintains liaison between ATF and Federal and State agencies, industry associations and members of industry involved in explosives. Coordinates the implementation of memoranda of understanding on explosives with the Departments of Defense, and the Mine Safety and Health Administration. Provides ATF representation to the National Fire Protection Association (Explosives Committee) and chairs the Interagency Committee on Explosives. Conducts tests for purposes of classification and unique variances for explosives storage. Revises and updates publications and internal management documents on various Compliance Operations matters. Compiles and publishes industry statistics.

(3) *National Firearms Act (NFA) Branch.* Processes applications to register, make, manufacture, transfer and/or export NFA firearms, and responds to inquiries and correspondence concerning NFA firearms. Maintains the National Firearms Registration and Transfer Record, which is required for NFA weapons. Maintains files of special (occupational) taxpayers dealing in NFA firearms. Grants exemptions to and maintains files on organizations such as Government-supported museums and those engaged in business for, or on behalf of, the United States Government. Furnishes certifications for use as evidence, and personal testimony in courts, on registration of NFA firearms. Monitors activity flow and maintains statistical data to discover regulatory or criminal violations and trends requiring initiation of investigations or revision of procedures, rulings, or legislation. Maintains liaison with other Government agencies, the firearms and explosives industry, local law enforcement officials, the Chief Counsel, and ATF Headquarters and field personnel. Prepares relevant information for industry and public use.

f. *Industry Compliance Division.* Monitors and directs the Bureau's regulatory compliance program with respect to the alcohol industry and ensures tax compliance with respect to the tobacco industry. Carries out these responsibilities by: monitoring industry practices and taking definitive action in a broad range of matters with the goal of obtaining voluntary industry compliance with the provisions of the Federal Alcohol Administration (FAA) Act and the Internal Revenue Code (IRC); providing advice on the FAA Act and IRC to the Bureau's field offices, other Federal and State agencies, foreign governments, domestic and foreign industries, and the public; and determining the proper classification and labeling of beverage alcohol products. Monitors and reviews international trade in beverage alcohol with a view toward identifying trade barriers, promoting free access to foreign markets, and suppressing incidents of international fraud. Three branches comprise the Division: (1) Alcohol Import-Export Branch; (2) Product Compliance Branch; and (3) Tax and Trade Compliance Branch.

(1) *Alcohol Import-Export Branch.* Exercises nationwide regulatory authority in matters affecting the importation and exportation of beverage alcohol. Provides information in this area to current and prospective industry members and to the general public. Responds to Congressional inquiries regarding importation and exportation of beverage alcohol, consumer and alcohol health and selected environmental concerns. Conducts research and analytical studies of foreign, technical, policy and procedural practices relating to the importation and exportation of beverage alcohol, consulting as necessary with the Director (Laboratory Services), the Office of Law Enforcement, and the Chief Counsel. Prepares and coordinates the issuance of policy papers, rulings and reports and provides advice to Bureau officials in regard to the need for new or amended rulings, regulations or procedures affecting the importation or exportation of beverage alcohol or furnishes an evaluation of such documents where appropriate. Serves as the central point of information for Bureau officials, other Federal and State officials and industry members on technical foreign importation requirements relating to beverage alcohol. Also, furnishes information and advice to the Environmental Quality Officer on all matters acted on by Compliance Operations relating to industry operations which are likely to have an impact on the environment and serves as the coordination point for the ATF Consumer Affairs program.

(2) *Product Compliance Branch.* Implements and enforces a broad range of statutory and compliance provisions of the IRC and the FAA Act, with regard to the beverage alcohol industry. Reviews for acceptability offers in compromise of violations of the IRC and FAA Act which come within the Branch's jurisdiction. Acts on applications for certificates of label approval and applications for exemption from label approval. Acts on proposed formulas for distilled spirits and wines to ensure that products are manufactured in accordance with laws and regulations. Acts on the

acceptability of beverage alcohol advertising in all media. Consults with industry regarding proposed advertising campaigns. Examines statements of process filed by proprietors of foreign and domestic distilled spirits plants, wineries and breweries for proper tax classification and product label identification. Acts on applications for approval of distinctive liquor bottles. Assesses the effectiveness of proposed and existing regulations affecting ATF field personnel, the beverage alcohol industry and the consuming public. Coordinates ATF policies relating to tax classification, labeling and product formulations with ATF Headquarters and field offices, the U.S. Customs Service, the Food and Drug Administration, the Department of State, foreign governments and industry members. Advises ATF field personnel, industry members and the consuming public on matters concerning the production, taxation, labeling, importation and distribution of beverage alcohol in interstate and foreign commerce.

(3) *Tax and Trade Compliance Branch.* Implements and enforces a broad range of statutory and regulatory provisions of the IRC and the FAA Act as they apply to the alcohol industry and the IRC as it applies to the tobacco industry. Advises industry regarding proposed sales promotions.

Makes decisions, with respect to the FAA Act, on industry trade practices, and advises ATF field offices on such practices. Prepares correspondence in response to inquiries from the public, industry, and Administration and Congressional representatives, and maintains liaison with the same. Reviews FAA Act and IRC investigation reports to ensure sufficiency of evidence and uniformity of actions. Monitors and coordinates significant IRC investigations, all national FAA Act investigations, and all investigations which are international in scope. Reviews proposed administrative actions to suspend or revoke FAA Act basic permits. Reviews FAA Act and IRC offers in compromise submitted to the Director and provides recommendations on their acceptance or rejection. Monitors progress on inspections and legal actions initiated by ATF regional offices or other Federal and State agencies which may be of multi-regional or national interest. Acts on applications for interlocking directorates with a view toward preventing monopolistic growth within the distilled spirits industry. Prepares rulings and industry circulars on tax and trade practice matters. Makes recommendations and offers technical advice on proposed amendments of the FAA Act and the IRC, and their associated regulations, in the areas of revenue protection and trade practices. Prepares and delivers speeches to industry and Bureau personnel on the subjects of the tax and trade practice provisions of the IRC and FAA Act. Participates in special projects to increase the effectiveness of the FAA Act and IRC compliance programs by reviewing existing programs, policies and procedures; by establishing new programs, policies and procedures; and by developing and presenting training. Exchanges technical advice with Federal and State agencies and foreign governments concerning the laws and regulations on beverage alcohol and tobacco products. Performs duties relating to the analysis and collection of information relevent to Compliance Operations regulation programs through an operations officer. Monitors investigations involving potential hidden ownership and provides, through the Operations Officer, technical support and possible investigative leads.

g. *Regulations and Procedures Division.* Prepares and publishes Bureau regulations and procedural directives relating to the control of the alcohol and tobacco industries, and plans, develops, monitors and evaluates Compliance Operations audit policies and programs. Assists the associate director in establishing and maintaining an adequate system of legal controls over the qualification and operation of the alcohol and tobacco industries. Formulates decisions and takes definitive actions on industry operational matters. Researches and evaluates existing regulations and procedural guidelines for adequacy and effectiveness. Conducts studies and tests proposals aimed at improving methods and procedures applicable to both industry and ATF field operations. Prepares new or amended regulatory and internal management documents, forms and publications. Provides technical assistance to other divisions with respect to the interpretation, preparation, and processing of rulings, internal management documents, and forms. Directs and coordinates audit activities having national scope and impact, and provides technical assistance and expertise in audit-related matters, including active participation in examinations and investigations, to Compliance Operations and to other Bureau components. Coordinates regional projects relating to new or amended regulations, methods and procedures. Prepares and publishes the ATF Bulletin, and provides technical assistance to the other divisions in the preparation of other publications. Develops recommendations and provides technical assistance with respect to new or amendatory legislation. The Division consists of four branches: (1) Distilled Spirits and Tobacco Branch; (2) FAA, Wine and Beer Branch; (3) Procedures Branch; and (4) Audit Programs Branch.

(1) *Distilled Spirits and Tobacco Branch.* Implements a broad range of statutory and regulatory provisions of the IRC relating to distilled spirits and tobacco. This includes nonbeverage alcohol, alcohol fuels, the importation/exportation of alcohol and tobacco products, and the use of tax-free alcohol, specially denatured alcohol (SDA) and SDA articles. In conjunction with the Director (Laboratory Services) resolves technical questions critical to tax compliance by importers and manufacturers of industrial and nonindustrial spirits. Conducts research and analytical studies in program areas to determine the need for new or amended regulations, to implement legislation, to accommodate technological changes or trends, to respond to industry or other governmental requests for regulatory changes or to increase the efficiency and effectiveness of Bureau compliance programs. Prepares and coordinates the issuance of appropriate documents setting forth new or amended regulations. Reviews existing or proposed regulations to ensure compliance with Government-mandated programs relating to small business, regulatory reform, and paperwork management. Conducts field visits to test proposals for new or amended regulations prior to adoption, identifying compliance problem areas, and ensuring uniform application of regulations. Formulates interpretive rulings on a wide variety of matters concerning the legal IRC-related activities of the regulated industries under branch jurisdiction. Advises regional offices and industry members on the tax classification of tobacco products. Acts on special applications involving proposals for conducting operations or installing, using or constructing equipment on premises other than as prescribed by law or regulations. Prepares precedent-setting interpretive responses concerning excise or occupational taxes, claims or other matters not directly related to the aforementioned special applications. Prepares and publishes formal rulings or industry circulars on any industry related actions or interpretations by the

Bureau which are of a precedent-setting nature, whenever the action has industy-wide or area-wide application. Prepares and publishes statements relating to procedures to be followed by industry members in complying with applicable laws and regulations. Issues procedural rules as required by the Administrative Procedures Act, Regulatory Flexibility Act, Paperwork Reduction Act and related regulations. As directed by management, may work closely with the Audit Programs Branch in coordinating nationwide revenue protection examinations.

(2) *FAA, Wine and Beer Branch.* Implements a broad range of statutory and regulatory provisions of the Federal Alcohol Administration Act and of the IRC relating to beer and wine. Conducts research and analytical studies in those program areas to determine the need for new or amended regulations, to implement legislation, to accommodate technological changes or trends, to respond to industry or other governmental requests for regulatory changes or to increase the efficiency and effectiveness of Bureau programs. Prepares and coordinates the issuance of appropriate documents setting forth new or amended regulations. Reviews existing or proposed regulations to ensure compliance with Government-mandated programs relating to small business, regulatory reform, and paperwork management. Conducts field visits to test proposals for new or amended regulations prior to adoption, identifying regulatory problem areas, and ensuring uniform application of regulations. Reviews and evaluates petitions from industry members for the establishment of viticultural areas and takes regulatory action to establish approved areas. Formulates interpretive rulings on a wide variety of matters under the IRC for beer and wine industries. Acts on special applications involving proposals for conducting operations or installing, using or constructing equipment on premises other than as prescribed by the IRC and regulations. Prepares precedent-setting interpretive responses concerning excise or occupational taxes, claims or other matters under the IRC not directly related to the aforementioned special applications. Prepares and publishes formal rulings or industry circulars on any industry related actions or interpretations by the Bureau under the IRC which are of a precedent-setting nature, whenever the action has industry-wide or area-wide application. Prepares and publishes statements relating to procedures to be followed by industry members in complying with applicable laws and regulations. Issues procedural rules as required by the Administrative Procedures Act, Regulatory Flexibility Act, Paperwork Reduction Act and related regulations.

(3) *Procedural Branch.* Plans, develops, and issues internal directives, forms, and public use documents to implement laws and regulations relating to the alcohol and tobacco industries. Conducts research and analyses of internal management documents as well as regional documents regarding internal procedures. Provides technical advice in regard to the preparing and processing of any directives as well as any forms. Acts on requests for internal management variations. Amends the Statement of Procedural Rules and Regulations relating to procedures and administrative actions for the Bureau. Prepares and publishes the ATF Quarterly Bulletin, a digest of rulings, regulations and procedural changes directed to field offices and industry members. Revises and updates other publications and internal management documents on various Compliance Operations matters. Maintains lists of qualified establishments authorized by ATF to operate. Prepares and publishes instructions and procedures to be followed by industry members in complying with applicable laws and regulations. Furnishes general information to industry and the public. Prepares **Federal Register** documents relating to procedural rules on ATF tax returns covering alcohol and tobacco commodities. Monitors and gives advice relative to defaults and bankruptcies. Issues procedural rules as required by the Adminstrative Procedures Act, Regulatory Fexibility Act, Paperwork Reduction Act and related regulations.

(4) *Audit Programs Branch.* Plans, develops, monitors and evaluates the Bureau's Compliance Operations audit policies and programs. Provides technical audit assistance and guidance for filed examinations of the regulated industries to determine the correct tax liability and simultaneously encourages voluntary compliance with excise tax laws and regulations. Provides audit expertise to Law Enforcement and Compliance Operations including active participation on investigations and examinations. When requested, develops examination work plans for, and monitors progress of, ATF officers engaged in special audits or audit programs, examinations or investigations. When requested by Compliance Operations management, or in conjunction with specific strategic planning units, directs and coordinates revenue examinations of multi-regional excise taxpayers to ensure uniformity of applied examination techniques. Monitors activity flow and studies common problem areas within various segments of the regulated industries to discover trends requiring development of special audit programs or special auditing techniques. Provides updates on successful examination methods to ATF officers. Conducts technical post reviews of revenue examination conducted by field offices to ensure uniformity of auditing techniques. Reviews operations of the office of the Regional Audit Manager to ensure high quality examination standards are being applied and properly carried out. Keeps current in the latest innovations in accounting/auditing techniques outside ATF for possible adoption. Provides advice, assistance and training to ATF components on auditing theory and practice, and issues audit guidelines for field examinations. Initiates, directs, and/or participates in special projects and training to improve effectiveness of auditing of revenue protection and other programs, upgrades examination performance levels of auditors and inspectors, identifies opportunities to improve existing regulations and internal directives, and encourages voluntary tax compliance. Does research and serves as primary technical resource in audit/financial related projects or studies (e.g., determines revenue impact of proposed regulation or ruling). Promotes understanding of Bureau policies and audit related revenue protection activities at conferences and seminars for industry and Bureau personnel. To ensure effectiveness use of field resources, coordinates the planning of all field related revenue protection activities with the Tax and Trade Compliance Branch, Industry Compliance Division.

19. Assistant Director (Internal Affairs)

Acts as principal assistant to the Director in developing and implementing the internal investigation, operations review, and internal audit programs on a Bureau-wide basis. Develops a program to ensure the highest standards of integrity among all employees in accomplishing the mission of the Bureau, which includes the independent review and appraisal of Bureau activities to assist management in ensuring compliance with program plans and directives. May report to the Inspector General on matters involving specific inspection programs, audits and significant investigations. The Office consists of three divisions: (1) Internal Audit Division; (2) Internal

Investigations Division; and (3) Operations Review Division.

(a) *Internal Audit Division.* Provides, as an integral part of the management control system, full-scope, comprehensive audits, reviews and appraisals of financial, accounting and other programs and operations. Prepares, in accordance with Treasury Directive TD 15-02 (the Department's internal audit policies), internal audits including independent examinations of economy, efficiency and effectiveness in addition to financial and compliance matters. Develops an annual and longer-range audit plan which ensures that financial operations are properly conducted; financial reports are prepared fairly; applicable laws and regulations have been complied with; resources are managed and used in an economical and efficient manner; and desired results and objectives are being achieved in an effective manner. Audits and reviews are full-scope; of a comprehensive nature and have Bureau-wide impact. Audits are made by auditors who are skilled in accounting and administrative controls and the method of review associated with auditing. Audits are performed in accordance with detailed audit programs and encompass effectiveness, efficiency and economic aspects of programs and operations that cross functional and geographic lines of authority and responsibility. Audits are conducted in compliance with policy and guidelines prescribed by GAO, OMB and the Department.

b. *Internal Investigations Division.* Plans and conducts investigations involving alleged or suspected illegal acts on the part of Bureau employees. Investigates bribery, attempted bribery, and other efforts directed toward undermining employee integrity. Coordinates and reviews routine Federal tort claim investigations; and conducts inquiries involving fatalities, shootings, or other critical or sensitive incidents. Investigates employee integrity or misconduct and develops programs to identify and prevent employee dereliction or malfeasance. Initiates and coordinates all security and other types of background investigations, including security update investigations on employees in critical or non-critical sensitive positions. Issues all security clearances. Conducts inspections of all offices to determine compliance with Treasury document security requirements and makes recommendations for improvements in security procedures. Maintains all investigative files and indices for the Office of Internal Affairs. The Division consists of three regional investigations offices and a security office.

c. *Operations Review Division.* Plans and performs a program of regularly scheduled and unscheduled, independent, comprehensive inspections, reviews and evaluations of all offices, functions and activities of the Bureau of Alcohol, Tobacco & Firearms, to determine their compliance with published policies and Bureau programs, efficient deployment of resources, and conformance with laws and regulations. Develops and conducts a follow-up review program to ensure that operations and management evaluations conducted by other Bureau offices are complete and objective and that recommendations have been completed. Examines the interrelationships in and among all organizational elements of the Bureau. Prepares reports on evaluations and reviews for submission to the Director and informs operating officials of findings concerning noncompliance or problems involving functions for which they are responsible. Provides direct information support and guidance to Office of Internal Affairs (OIA) Regional Inspectors in the conduct of vulnerability probes of ATF field offices. Requires, at times, that both Headquarters and field supervisors and managerial personnel assist in conducting reviews. Develops an annual operations review plan in an effort to ensure that all facets of ATF operations are reviewed and evaluated in an equitable fashion, and Bureau objectives are being achieved in an effective manner. Reviews are conducted by criminal investigators, inspectors and program analysts whose backgrounds correspond with the major programmatic activities of the organization. Monitors and controls Internal Affairs' Computerized Review Universe System (CRUS), which provides analytical and evaluative information on reviews conducted by OIA, as well as those performed by other Bureau activities, to provide higher level Bureau managers with a indication of those organizational segments of the Bureau either exhibiting or appearing to be potentially susceptible to operational deficiencies. Assists the Internal Investigations Division, periodically, in conducting investigations as required or directed, on allegations concerning employee integrity and conduct. Drafts directives and procedural instructions concerning those functions germane to the Division's responsibilities.

20. Regional and District Counsels

a. *Regional Counsel.* Serves under the general direction of the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms, as the principal legal adviser to the special agents in charge, regional director (Compliance) and the field laboratory chief, within the region. Gives legal advice on request to principal regional and field officials on the administration and enforcement of the laws and regulations pertaining to liquor, tobacco, firearms and explosives. Reviews and makes recommendations upon request, regarding claims for refund, abatement and drawback of liquor, tobacco, and firearms taxes, and for damages, and with respect to petitions for remission or mitigation of forfeitures, offers in compromise, and proposed tax assessments. Assists United States attorneys by preparing indictments, briefs, stipulations and other legal documents required in litigation, and by aiding in the prosecution and defense of suits. Performs required work in connection with administrative proceedings involving the issuance, suspension, revocation or annulment of liquor and tobacco permits including the preparation of the necessary orders, notices and pleadings and the presentation of the Government's case at both formal and informal hearings and performs similar functions with respect to the issuance and revocation of firearms and explosives licenses and permits. Furnishes legal assistance in connection with the investigation of accidents; the assertion of claims under 31 U.S.C. 3711, on behalf of the United States arising out of damage to, or loss of, Bureau property, and the compromise, termination or suspension of such claims; and prepares recommendations and furnishes advice and assistance to the United States attorneys with respect to suits to recover such damages where the amount claimed by the United States does not exceed $100,000 exclusive of interest and costs. Furnishes legal advice and assistance in respect to the seizure, forfeiture, and disposition of, and authorizes or sanctions the institution of judicial proceedings IN REM and prepares complaints for the forfeiture of, property seizure in connection with violations of laws relating to alcohol, tobacco, firearms and explosives, and prepares briefs and recommendations regarding petitions for remission or mitigation of forfeitures. Makes recommendations to the Chief Counsel respecting appeals of court decisions in alcohol, tobacco, firearms, and explosives matters. In addition, Regional Counsels for the Midwest and North-Atlantic regions directly supervise the District Counsel office located within their respective regions.

b. *District Counsel.* Performs all of the general legal services described for Regional Counsel in paragraph 20a. District Counsel offices, located in Cincinnati and Philadelphia, are under the direct supervision of Regional Counsels for the Midwest and North-Atlantic Regions, respectively.

21. Atlanta Field Laboratory and San Francisco Laboratory center

Provides technical support to Law Enforcement and Compliance Operations personnel in the areas of alcohol and tobacco products and firearms, explosives, arson and cigarette smuggling investigations through the scientific examination of product samples and physical evidence. Assists in consumer and revenue protection through formula compliance inspections. Assists other parts of the ATF laborary system through the development of new or improved chemical and forensic analytical techniques. Provides onsite assistance to Law Enforcement and Compliance Operations personnel as required, and participates in special agent and inspector training courses. Provides expert testimony on the basis of laboratory examinations. Additionally, the San Francisco Laboratory Center is the Bureau's domestic wine specialist laboratory, and is responsible for the technical oversight of wine products on a nationwide basis.

22. Reserved

23. Regional equal opportunity Officer

Serves under the general supervision of the Assistant to the Director (Equal Opportunity) as the regional equal opportunity officer and represents the Assistant to the Director (Equal Opportunity) in all matters. Operates as head of the program at the regional level and is responsible for the overall direction and operation of the equal opportunity program throughout the region. Develops programs, methods, and techniques for carrying out the prositive aspects of equal opportunity policy within the broad parameters established by Headquarters. Furnishes counsel and advice to the Assistant to the Director (Eaual Opportunity) on Bureau-wide responsibilities for leadership in the equal opportunity area. Supervises and coordinates the complaint processing system, affirmative action program development and evaluation, special emphasis programs for the Spanish-speaking, and the Federal Women's Program. Ensures that the region develops programs and resoruces necessary for positive and effective equal opportunity and upward mobility programs of such scope as to stand the test of evaluation for approval by Bureau Headquarters, regional Office of Personnel Management units, and district offices of the Equal Employment Opportunity Commission. Provides training for all supervisors in the region, special emphasis program coordinators, and equal opportunity counselors in all areas of equal opportunity. Keeps abreast of equal opportunity regulations, rulings, directives and Bureau policies; interprets such information for Bureau officials, and keeps them informed of new and significant developments. Speaks, as necessary, for the Assistant to the Director (Eaual Opportunity) at conferences, meetings, and discussions of equal opportunity policy matters among Bureau officials, other Federal officials and the general public.

24. Special Agent in Charge (District Office)

Under the general supervision of the Associate Director (Law Enforcement), executes broad national policy and programs at the district office level to enforce Federal criminal laws pertaining to alcohol, tobacco, firearms and explosives. Directs and supervises functions of the district office and all subordinate field offices. Coordinates and evaluates Law Enforcement activities throughout the district to ensure that policy and programs are properly executed with equal emphasis and uniform effort, and that investigative work is pursued in an orderly and timely manner.

8325. Regional Director (Compliance)

Coordinates and evaluates alcohol, tobacco, firearms and explosives activities to ensure that throughout the region, Compliance Operations policies and programs are properly executed with equal emphasis and uniform effort and that the work is pursued in an orderly and timely manner. Develops, in conformity with regulatory policies and programs established by the Headquartes office, regional programs, standards, and other measures necessary to implement most effectively the control and supervision of the legally qualified alcohol, tobacco, firearms, and explosives industries, and permittees and licensees. Exercises jurisdiction over the qualification of plants and premises and the issuance of permits, and examines and/or audits reports relating to plant operation submitted by proprietors and Government employees.

a. *Analyst Staff (Regional).* Plans the region's overall Compliance Operations program and coordinates, monitors, and evaluates ongoing programs throughout the region and regional headquarters to assure that policies and programs are efficiently and effectively executed in a timely manner. Evaluates statutory and regulatory requirements to provide a basis for regional recommendations for improvements in the law or regulations. Provides technical and managerial advice to the Regional Director (Compliance), to other managerial and supervisory officials, and, as circumstances warrant, technical advice to other ATF personnel and industry members. Keeps abreast of current industry developments and analyzes their effect on supervision and control. Develops regional resource requirements and plans allocation of such resources; develops regional programs, standards and other measures necessary to implement most effectively the qualification, control, and supervision of the legal alcohol, tobacco, firearms and explosives industries and permittees. Conducts special studies or surveys which have national or interregional implications, as requested by Bureau Headquarters. Participates in the development and execution of the Compliance Operations training program in coordination with Bureau Headquarters.

b. *Chief, Technical Services (Regional).* Provides expert technical advisory and consultative services to regional management and to representatives of the distilled spirits, beer, wine, industrial alcohol, tobacco, firearms, and explosives industries and related industry associations. Provides regional program planning, development, implementation, and evaluation with respect to the permit and license system, Audits and analyzes tax returns and the preparation of assessments. Acts on claims for drawback, refund, credit, remission or abatement of taxes by determining whether transactions are properly accounted for and whether liquor and tobacco taxes have been properly and timely paid. Prepares briefs concerning offers in compromise of criminal and civil liabilities.

c. *Regional Audit Staff.* Assists the Headquarters Audit Programs Branch in selecting alcohol and tobacco revenue producers for audit, and in analyzing audit results. Conducts such audits at industry sites to ensure protection of Government tax revenues under the direction of the Audit Programs Branch. Provides accounting expertise in Law Enforcement and Compliance Operations investigations in areas such as all-in-bond internal control reviews, arson-for-profit, cigarette smuggling, firearms and explosives enforcement, and Federal Alcohol Administration Act violations. Participates in Bureau-wide

and Compliance Operations conferences and task forces in auditing related areas.

d. *Chief, Field Operations.* Executes the Compliance Operations field inspection program relating to the regulation of the distilled spirits, wine, beer, tobacco products, and industrial alcohol industries as well as commerce in firearms and explosives. Defines requirements and establishes long- and short-range goals within the region, and organizes staff and resources to meet these goals. Assists the Regional Director (Compliance) in formulating plans and developing procedures to carry out Bureau-wide programs, and implements policies and procedures for maintaining the work skills and ensuring the development of field officers.

e. *Area Supervisor.* Under the direction of a chief, field operations, serves as an area supervisor with responsibility for planning, directing, supervising and coordinating the timely execution of the Compliance Operations revenue protection and compliance inspection programs within a designated geographical area, as such programs relate to the regulation of the distilled spirits, wine, beer, tobacco, and industrial alcohol industries, and to commerce in firearms and explosives.

26–30. Reserved

Field Offices

31. Original Field Organization

Treasury Department Order (TDO) No. 221, dated June 6, 1972, established the Bureau's original regional boundaries. This structure was identical to the seven-region structure followed by the Internal Revenue Service at the time. ATF transferred the State of Kansas from the Southwest to the Midwest Region in 1973. Thereafter, all Bureau activities operated under this revised structure until 1976.

32. Current Field Organization

a. The Office of Law Enforcement's current field organization was approved by the Treasury Department on September 23, 1983. Twenty-two district offices throughout the United States are headed by special agents in charge, who report to the Associate Director (Law Enforcement) at Bureau Headquarters. Each district office is administered by a special agent in charge and assisted by an assistant special agent in charge. The district office, in turn, maintains subordinate offices, which are called groups (if collocated with the district office) and posts of duty (if located in other cities). Groups are headed by group supervisors, and posts of duty by resident agents in charge. District office locations and geographic jurisdictions are illustrated in Exhibit 2.

b. The Office of Compliance Operations continues to operate in a regional structure, with each region headed by a regional director (Compliance). The Office's five regions, as approved by the Treasury Department on January 19, 1983, are as follows:

(1) *North Atlantic Region (New York, NY):* States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia; the District of Columbia; the Commonwealth of Puerto Rico; and the Territory of the Virgin Islands.

(2) *Southeast Region (Atlanta, GA):* States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee.

(3) *Midwest Region (Chicago, IL):* States of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia and Wisconsin.

(4) *Southwest Region (Dallas, TX):* States of Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, Texas and Wyoming.

(5) *Western Region (San Francisco, CA):* States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, and Washington; the Territories of Guam and American Samoa; and the Trust Territory of the Pacific Islands.

Within each region, there are several area offices, headed by area supervisors who report to the Regional Director (Compliance) through a chief, field operations. Each area office has one or more posts of duty, established as required by workload demands. Area office locations and geographic jurisdictions are illustrated in Exhibit 3.

c. Within the Office of the Comptroller, the Director (Laboratory Services) supervises the San Francisco Laboratory Center and the Atlanta Field Laboratory.

d. The Assistant to the Director (Equal Opportunity) maintains offices in the five regional headquarters cities. The geographic responsibilities of these offices also coincide with those of the five Compliance Operations regions.

e. The Office of the Chief Counsel supervises five regional counsel offices, whose geographic responsibilities correspond to those of the Compliance Operations regions. In addition, district counsel offices are located in Cincinnati (reporting to the Chicago regional counsel) and Philadelphia (reporting to the New York regional counsel).

f. The Office of Internal Affairs is centralized at Bureau Headquarters. However, some members of this Internal Investigations Division are stationed in Chicago and San Francisco to minimize operating costs.

Signed: September 17, 1986.

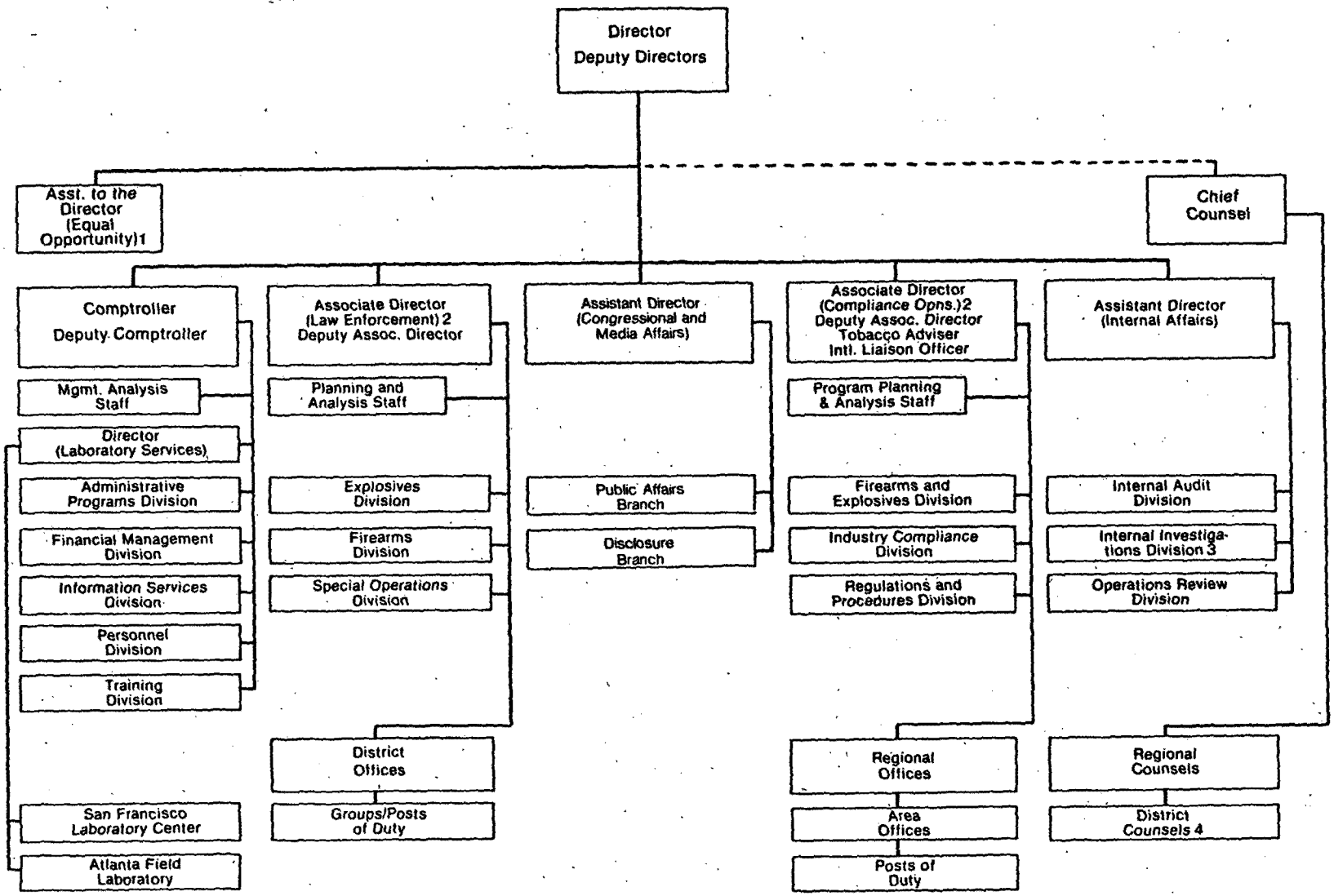
Stephen E. Higgins,

Director.

BILLING CODE 4810-31-M

Exhibit 1

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS



1 Field equal opportunity offices located in New York, Atlanta, Chicago, and San Francisco.

2 Associate Directors serve concurrently as Deputy Directors.

3 Field personnel stationed in Washington, DC, Chicago and San Francisco.

4 Cincinnati and Philadelphia only.

Exhibit 2

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
OFFICE OF LAW ENFORCEMENT
DISTRICT OFFICES

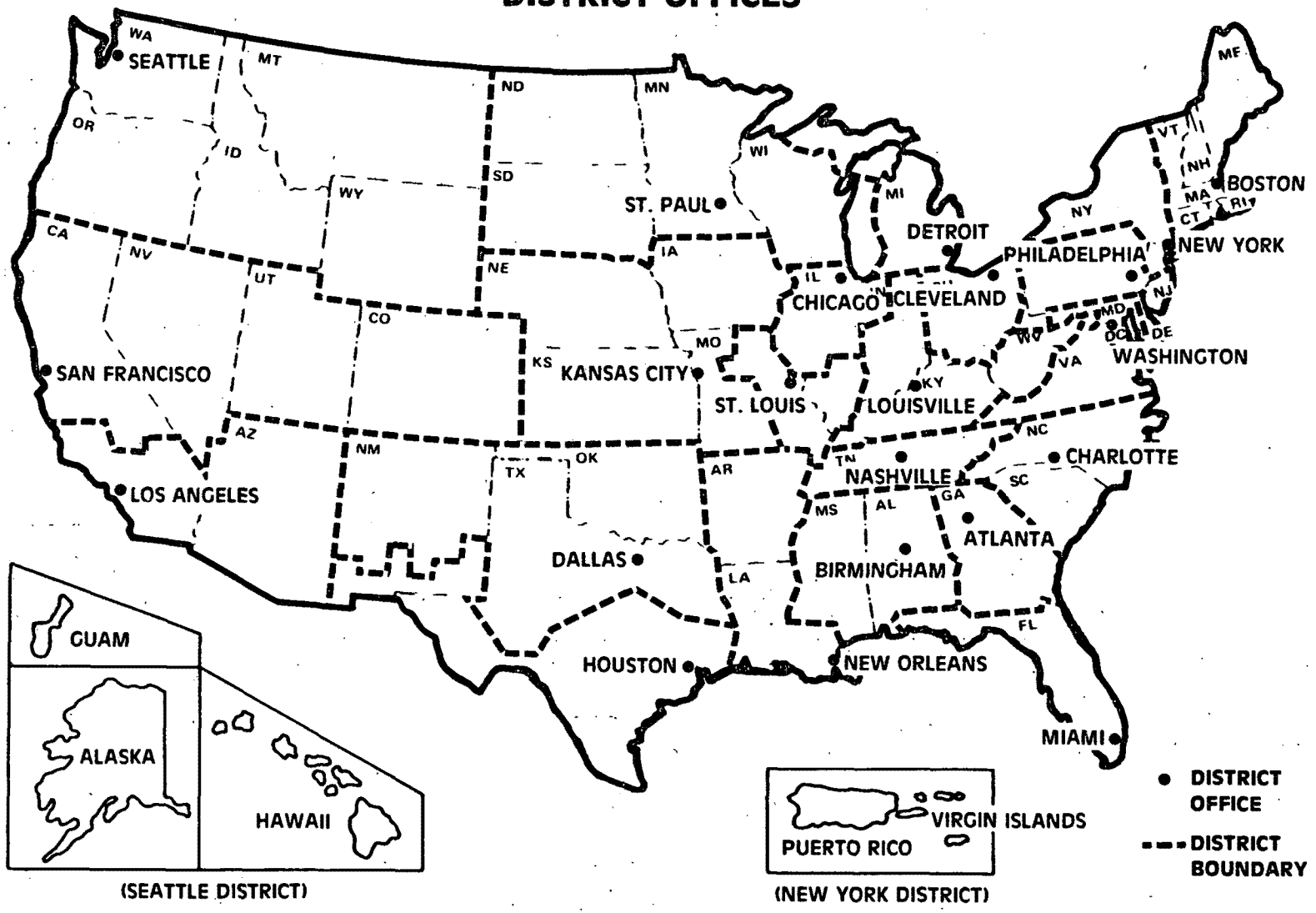


Exhibit 3

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

OFFICE OF COMPLIANCE OPERATIONS
REGIONAL AND AREA OFFICES

[FR Doc. 86-21852 Filed 9-25-86; 8:45 am]
BILLING CODE 4810-31-C

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effect of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC on October 21, 1986 at 8:30 a.m.

The committee will: (1) Review and make appropriate recommendations relative to the Veterans Administration's programs to assist Vietnam Veterans who were exposed to herbicides; such recommendations may concern the information delivery system and outreach efforts, scheduling of Agent Orange-related examinations, essential follow-up activities,and other related matters; (2) advise the Administrattor on VA Agent Orange-related programs, programs of the Federal Government, and State programs which are designed to assist veterans exposed to herbicides, and simultaneously, will minimize duplication of VA and other federal programs concerned with the Agent Orange issue; (3) receive and review information from veterans service organizations regarding services provided by the Veterans Administration to Vietnam veterans concerned about the possible adverse health effects of exposure to herbicides; (4) review and comment on proposals for research on the possible health effects of exposure to herbicides; and (5) serve as a forum for individual veterans to inform the Veterans Administration of their views on policy issues and on the operation of Agency programs designed to assist veterans exposed to herbicides and dioxins in Vietnam.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may direct questions, in writing, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Agent Orange Projects Office (10X21), Department of Medicine and Surgery, Veterans Administration Central Office, Washington, DC 20420. (Telephone: (202) 653–5043).

Dated: September 18, 1986.

By director of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–21775 Filed 9–25–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 187
Friday, September 26, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: FR 51—33339.

TIME AND DATE OF MEETING: September 24, 1986 at 10:00 a.m.

CHANGES: Meeting canceled.

LISTED BELOW ARE THE AGENDA ITEMS WHICH WERE CANCELED.

Commission Meeting; Wednesday, September 24, 1986, 10:00 a.m., Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Open to the Public

1. *General policy statement.* The Commission will consider a proposed Statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.
2. *Commission structure.* The Commission will consider certain Agency structural realignments initiated by the Chairman.
3. *Industrial safety handbook.* The Commission will consider the proposal forwarded by the American National Standards Institute/CPSC coordinating Committee for the Commission to lead in the development of a publication to be used by manufacturers of consumer products. The publication would assist in the manufacture of safer products.
4. *Management review: Field operations reorganization.* The staff will brief the Commission on issues related to reorganization options for field operations.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave, Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 86-21929 Filed 9-24-86; 12:08 pm]
BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, October 1, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *General policy statement.* The Commission will consider a proposed Statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.
2. *Commission structure.* The Commission will consider certain Agency structural realignments initiated by the Chairman.
3. Industrial safety handbook. The Commission will consider the proposal forwarded by the American National Standards Institute/CPSC Coordinating Committee for the Commission to lead in the development of a publication to be used by manufacturers of Consumers Products. The publicatin would assist in the manufacture of safer products.
4. *Management review: Field operations reorganization.* The staff will brief the Commission on issues related to reorganization options for field operations.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-'492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

September 24, 1986.

[FR Doc. 86-21931 Filed 9-24-86; 12:08 pm]
BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 2, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FOIA Fees: Options

The Commission will consider proposed amendments to sections of the Freedom of Information Act regulations pertaining to fees.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

September 24, 1986.

[FR Doc. 86-21930 Filed 9-24-86; 12:09 pm]
BILLING CODE 6355-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, October 6, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW, Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: September 24, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

This Notice Issued September 24, 1986.

[FR Doc. 86-21925 Filed 9-24-86; 12:08 pm]
BILLING CODE 6750-06-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, October 7, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW, Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: September 24, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued September 24, 1986.

[FR Doc. 86-21926 Filed 9-24-86; 12:08 pm]

BILLING CODE 6750-06-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:45 p.m. on Monday, September 22, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the application of Charter Thrift and Loan, an operating noninsured industrial bank, located at 10 West Broadway, Salt Lake City, Utah, for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Dated: September 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-21912 Filed 9-24-86; 12:08 pm]

BILLING CODE 6714-01-M

7

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 1, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-21884 Filed 9-24-86; 10:39 am]

BILLING CODE 6210-01-M

8

NATIONAL TRANSPORTATION SAFETY BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 33341, September 19, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, September 16, 1986.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda:

5. *Public Hearing Request:* Trailways Bus/Rising Fast Trucking Co., Tractor-Semitrailer Collision and Overturn on Interstate 40, Brinkley, Arkansas, July 14, 1986.

CONTACT PERSON FOR MORE INFORMATION: H. Ray Smith (202) 382-6525.

H. Ray Smith,

Federal Register Liaison Officer.

September 12, 1986.

[FR Doc. 86-21863 Filed 9-23-86; 4:09 pm]

BILLING CODE 7533-01-M

9

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 29, 1986:

A closed meeting will be held on Tuesday, September 30, 1986, at 1:30 p.m. An open meeting will be held on Thursday, October 2, 1986, at 10:00 a.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 30, 1986, at 1:30 p.m., will be:

Litigation matter.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

The subject matter of the open meeting scheduled for Thursday, October 2, 1986, at 10:00 a.m., will be:

1. Consideration of whether to issue a release adopting certain revisions to Form D, the notification required to be filed when any of the Regulation D exemptions from the registration requirements of the Securities Act of 1933 are utilized. The release will also indicate when Forms D must be filed. For further information, please contact Karen M. O'Brien at (202) 272-2644.

2. Consideration of whether to issue a release that would adopt amendments to

Securities Exchange Act Rule 17Ad–1. Those amendments would require registered transfer agents to count as a separate item each line on a depository-submitted shipment control list. For further information, please contact Jerry Greiner at (202) 272–2066.

3. Consideration of whether to propose for public comment temporary Rule 13f–2 and temporary Form 13F–E under the Securities Exchange Act of 1934 which would permit institutional investment managers to file Form 13F reports electronically through Edgar, the Commission's electronic disclosure system. For further information, please contract Gerald T. Lins at (202) 272–2030.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald A. Schy at (202) 272–2468.

Dated: September 23, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–21948 Filed 9–24–86; 2:15 pm]

BILLING CODE 8010–01–M

10

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 12:00 p.m., October 7, 1986.

PLACE: Uniformed Service University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" [5 U.S.C. 552b(e)(3)].

MATTERS TO BE CONSIDERED:

Meeting—Board of Regents—12:00 p.m.

(1) Approval of Minutes—July 21, 1986;

(2) Faculty Appointments—Notification of Sabbatical Leave;

(3) Report—Admissions: (a) Class of 1990 Profile, (b) Class of 1990 Biographies and List of Undergraduate Institutions, (c) Admissions Data-Class of 1991;

(4) Report—Associate Dean for Operations;

(5) Report—President, USUHS: (a) University Awards, (b) F. Edward Hebert School of Medicine—(1) Assistant Dean, Graduate Education Liaison, (c) Human Immunodeficiency Virus Testing, (d) Drug and Alcohol Abuse Program, (e) Graduate Education—(1) Certification of Graduate Students, (f) Informational Items;

(6) Comments—Members, Board of Regents.

(7) Comments—Chairman, Board of Regents

New Business

SCHEDULED MEETING: January 12, 1987.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295–3049.

Linda M Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 24, 1986.

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Friday
September 26, 1986

Part II

Department of Transportation

Coast Guard

33 CFR Parts 151 and 158

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances; Notice of Proposed Rulemaking

46 CFR Parts 98, 151, 153, and 172

Pollution Rules for Ships Carrying Hazardous Liquids; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

33 CFR Parts 151 and 158

[CGD 85-010]

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the pollution regulations. These amendments are necessary in order to implement the Annex II port and terminal backpressure requirements and reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). These amendments would reduce the amount of residues remaining in ships' cargo tanks, limit the amount of noxious liquid substances (NLS) discharged into the sea, and ensure that ships would suffer no undue delay while waiting to discharge this material to a reception facility.

DATES: Comments must be received on or before November 10, 1986.

2. The Coast Guard will hold a Public Meeting of the Reception Facilities Working Group of the National Committee for the Prevention of Marine Pollution on October 31, 1986 to discuss this proposal. Those interested in attending are requested to notify Lieutenant Timothy M. Mallon (see For Further Information Contact) by 3:30 p.m. on October 24, 1986. Written comments or questions desired to be discussed at this meeting may be submitted at the location in Addresses until October 24, 1986.

ADDRESSES: 1. Comments should be submitted to Commandant (G-CMC/22) (CGD85-010) U.S. Coast Guard, Washington, DC 20593-0001. Comments will be available for inspection or copying at the Marine Safety Council (G-CMC/22), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001 between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Copies of the draft evaluation and the environmental assessment may also be inspected or copied at that address or obtained by a written request to the same address. To expedite processsing, requests for the draft evaluation and the environment assessment should be submitted separately from any comments submitted.

2. The Public Meeting of the Reception Facilities Working Group of the National Committee for the Prevention of Marine Pollution is open to the public, but attendees are requested to pre-register. The meeting will be held from 9:30 a.m. to 2:30 p.m. in the Federal Aviation Administration Auditorium in Building FOB-10A, 200 Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Timothy M. Mallon, Office of Marine Safety, Security, and Environmental Protection, (G-MPS-3), telephone 202-267-0494. Normal working hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify the docket number (CGD 85-010), and the specific section of the proposal to which each comment applies, and the reasons for each comment. If an acknowledgment is desired, a self-addressed, stamped post card should be enclosed. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requests in writing are received from persons raising genuine issues and desiring to comment orally at a public hearing and it is determined that the opportunity to make oral presentation would aid in the rulemaking procedure.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Timothy M. Mallon, Office of Marine Safety, Security, and Environmental Protection, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Background to the Proposed Regulation

MARPOL 73/78, including Annex I and II, was ratified by the United States on August 12, 1980. Under Annex II of MARPOL 73/78, chemicals shipped in bulk that present sufficient threat to the marine environment are assigned to one of four NLS Categories: A, B, C, or D. Category A substances present the greatest threat and each subsequent category present a diminishing treat.

Significant amendments to Annex II were recently adopted by IMO. The vessel requirements of Annex II and the Standards for *Procedures and Arrangements for the Discharge of Noxious Liquid Substances* (Res. MEPC 18 (22), 1985), developed by the International Maritime Organization (IMO) under a mandate of MARPOL 73/78, would be implemented under a notice of proposed rulemaking (CGD 81-101) appearing elsewhere in this issue of the **Federal Register**. A discussion of the background to the amendments can be found in the preamble of CGD 81-101. Under that proposal, ships would be required to prewash cargo tanks following the discharge of Category A or solidifying or high viscosity Category B or Category C NLS cargo, except when the cargo tanks are ventilated or backloaded with another cargo without cleaning. Ships would be required to discharge the tank wash water resulting from the prewash to a reception facility in the unloading port unless the NLS residue is retained on board for disposal at another reception facility.

Regulation 7 of Annex II requires the Government of each Party to the Convention to undertake to ensure the provision of reception facilities according to the needs of ships using its ports, terminals, or "repair ports" (ship repair yards) to receive residues and mixtures containing NLS from ships without undue delay in cargo loading and unloading ports and terminals and "ship repair ports" undetaking repairs to chemical tankers. Regulation 7 also requires that cargo unloading terminals provide facilities to allow stripping of cargo tanks of ships unloading NLS at these terminals, and it prohibits draining cargo hoses and piping systems containing NLS back to the ship. It should be noted that the Act to Prevent Pollution from Ships (The Act) which is the enabling legislation for implementing MARPOL 73/78 defines terminals as including ports and although MARPOL 73/78 seems to be limiting application of Regulation 7 in some instances to only terminals, this limitation would not apply under the Act. The Act also mandates the establishment of regulations setting criteria for determining the adequacy of reception facilities of a port or terminal and procedures for certifying that the port's or terminal's facilities for receiving residues and mixtures containing oil or NLS from "seagoing ships" are adequate. This proposal uses the term "oceangoing" instead of "seagoing" to be consistent with pollution requirements contained in 33 CFR Part 151.

An Advance Notice of Proposed Rulemaking (ANPRM) concerning the requirements for reception facilities to implement Annex I and Annex II of MARPOL 73/78 was published in the March 24, 1983 issue of the **Federal**

Register (48 FR 12395). A total of 69 comments were received from individuals, businesses, industry organizations, other Federal agencies, and State and local governments. Sixteen of these comments relate specifically to Annex II. Seven comments to the Interim Final Rule that implemented Annex I (published in the September 9, 1985 issue of the Federal Register, 50 FR 36768) requested changes that were considered before drafting the proposed revisions to 33 CFR Part 158, Subparts A and B. Comments to the ANPRM and Interim Final Rule are discussed below.

A related document, CGD 81-101, proposes design and operating requirements for oceangoing U.S. flag ships and foreign flag ships trading in U.S. waters that carry bulk cargo of noxious liquid substances. That document appears elsewhere in this issue of the Federal Register.

Proposed Changes To Part 151 and Part 158 To Implement Annex II

1. The following changes would be made in Parts 151 and 158 to reflect the expanded coverage made necessary by the implementation of Annex II. The purpose section in § 151.01 would be revised by omitting reference to the specific provisions of Annex I of MARPOL 73/78 which are adopted in this part, the denial of entry prohibition in § 151.08 (previously § 158.180) would be reworded; the control of discharge of oil in § 151.09 would be revised and the control of discharge of NLS would be added in § 151.43; the statement of purpose (§ 158.100) and applicability (§ 158.110) would be changed; the delegation in § 158.130 would be expanded to grant the Captain of the Port (COTP) authority to conduct inspections of ports and terminals; the general reception facility criteria in § 158.200 would be modified; and the definitions of "noxious liquid substance (NLS)", "NLS certificate", "oil-like-NLS", "residues and mixtures containing NLSs (NLS residue)" would be added to both parts, and "port" and "terminal" to Part 151.

2. Section 151.08—Several commenters to the interim rule implementing Annex I and published in the September 9, 1985 issue of the Federal Register (50 FR 36768) stated that the "denial of entry" requirements would be more appropriate in the vessel regulations than in the reception facility regulations where it was published as § 158.180. The Coast Guard agrees and is proposing this redesignation as § 151.08.

The reference in current § 158.180 to Regulation 9 of Annex I to MARPOL 73/78 which establishes restrictions on the discharge of oil by ships at sea would be omitted in this proposal. It is replaced by reference to § 151.09 which adopts the requirements of MARPOL 73/78 relating to the discharge of oil. A reference is made in proposed § 151.08 to 46 CFR Part 153 (proposed in CGD 81-101) since it concerns the restrictions on the discharge of NLS by ships at sea contained in Annex II.

3. Sections 151.31 to 151.45—The Coast Guard is proposing ship design, equipment, and operating requirements in this document in conjunction with changes to Title 46 being proposed in CGD 81-101. The requirements proposed for ships in this document would concern "Oil-like" NLSs (proposed Table 2 cargoes), and NLSs that have few hazards beyond their capability to cause limited environmental harm if discharged overboard with no controls (proposed Table 1 cargoes).

Each of the cargoes proposed in Tables 1 and 2 could be carried under the rules proposed in CGD 81-101 as an alternative to those proposed for 33 CFR Part 151. Therefore, ships operating under 46 CFR Part 153 would be able to have the Table 1 and 2 NLSs added to their Certificates of Inspection if the ships met Annex II related design and equipment requirements proposed for 46 CFR Part 153. These proposed alternatives would be cross-referenced in both the Title 33 rules and the Title 46 rules.

Proposed § 151.43 would adopt the Annex II restriction on discharging NLS residue into the sea and cross-reference the discharge requirements contained in 46 CFR 153.1126 and 153.1128 (proposed in CGD 81-101). It is proposed that oceangoing ships carrying NLS cargo provide specific information to the port or terminal of call 24-hours before entering, including the need for reception facilities.

Several commenters requested that the Coast Guard increase the advance notice requirements because they believe they need more time to make arrangements for reception facilities. The Coast Guard has rejected these comments because arrangements between the port or terminal and the reception facility should be concluded before applying for a Certificate of Adequacy. The 24-hour notice should be sufficient time to allow the port or terminal to alert the reception facility operator of the need for its services. This conclusion is based on a survey the Coast Guard conducted which found that mobile reception facilities would be capable of responding within 24 hours after notification. The proposed 24-hour advance notice is consistent with the requirements for ships requesting reception facilities for residues and mixtures containing oil and is compatible with other Coast Guard advance notice regulations, thus easing the burden on the reporting ship. Furthermore, there is nothing in this proposal that would prevent ports and terminals arranging for greater advance notification from ships that need the service of reception facilities.

The Independent Liquid Terminals Association (ILTA) and other commenters requested that additional advance notification information be supplied to the port or terminal. They requested that the notification include information required of a "generator" of "hazardous waste" under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 *et seq.*) and implementing regulations. The Coast Guard rejected this comment because it concerns issues under the EPA's authority. Several commenters recommended that ships be required to provide information on the content of the residues and mixtures to prevent damage to storage, treatment, or disposal facility equipment. As a result of these comments, the Coast Guard rewrote the proposal to require the person in charge of an oceangoing ship to identify the name of the ship, the name and amount of any cleaning agents, the name of the NLS cargo, the total volume of residues and mixtures containing NLS, and the estimated volume of NLS in the residues and mixtures to be discharged.

4. Section 158.110—Fourteen commenters recommended that ports and terminals should be required to make reception facilities available to ships for the discharge of residue only when the residue resulted from the transfer of NLS cargo at the port or terminal. These commenters predicted environmental and safety hazards if ports and terminals were required to receive chemicals that are not normally handled because personnel do not have the necessary training, experience, or equipment. The Coast Guard agrees with the commenters and is not proposing that ports and terminals make reception facilities available to receive chemicals it does not normally handle; however, if a port or terminal unloads a Category A or Category B or C solidifying of high viscosity NLS cargo and refuses to take tank wash water from the prewash procedure proposed in CGO 81-101, the Coast Guard is proposing that this refusal could be grounds for suspension of the Certificate of Adequacy since the port or terminal would not be providing for the needs of

the ships using it, as required by Regulation 7 of Annex II.

One commenter suggested that denial of entry of shipyards would be inappropriate where repairs do not involve any part of the cargo systems. Further, the commenter felt that a declaration by a ship repair contractor of the ability to lawfully dispose of wastes associated with the repair of chemical tankers should be sufficient to obtain a Certificate of Adequacy. The Coast Guard does not agree with the comment. A simple declaration by a ship repair contractor of the ability of lawfully dispose of wastes associated with the repair of chemical tankers would not be the equivalent of "adequate to receive" nor could it satisfy the inspection and consultation requirements of section 1905(c) of the Act. The Coast Guard is proposing that reception facilities meet the criteria of proposed Subpart C before a Certificate of Adequacy is issued. The Coast Guard would deny entry of oceangoing ships carrying an NLS cargo or NLS residue to ship repair yards that do not hold Certificates of Adequacy.

Another commenter stated that terminals at which chemicals are only unloaded should not be required to have reception facilities because it is not normally necessary to wash tanks at the unloading port or terminal. The Coast Guard disagrees with this comment. The regulatory approach requires that ports and terminals provide reception facilities for ships for the discharge of NLS residue resulting from the prewash of cargo tanks carrying Category A or high viscosity or solidifying Category B or C NLS cargo unloaded at the port or terminal. Five commented that vessels should be permitted to carry waste to a treatment, storage, or disposal facility, even if the facility is outside the port or terminal where the transfer takes place. Four commenters felt the real need for reception facilities would arise so infrequently that it did not justify having the reception facility at or near the terminal. The Coast Guard considered these comments. Although CGD 81-101 requires ships unloading Category A or high viscosity or solidifying Category B or C NLS cargo at the port or terminal to prewash the tanks and discharge NLS residue to a reception facility located a the port or terminal, the prewash and discharge ashore may be omitted provided the waiver requirements for prewash and discharge in another port or terminal specified in 46 CFR Part 153 are met. The Coast Guard proposal would require ports and terminals to obtain a Certificate of Adequacy. Adequacy would be determined on a case by case basis, taking into consideration the anticipated vessel traffic and the cargoes handled. As proposed in CGD 81-101, the requirement to prewash cargo tanks may be omitted on ships that do not carry solidifying or high viscosity Category B or C NLS. If the port or terminal handles only these vessels and cargoes, and meets the requirements proposed in this rulemaking to facilities efficient stripping operations, zero reception capacity may be adequate. The vessel requirements proposed in CGD 81-101 would also allow waivers of prewashing requirements if the residue can be removed by ventilation, if the cargo tank can be reloaded without prewash, or if the vessel has made arrangements to use reception facilities located at another port or terminal. These alternatives would reduce the required capacity of reception facilities and, in specific instances, could also result in a Certificate of Adequacy being issued with zero or limited reception facilities actually available. The intent of the two proposed rulemakings is to ensure that the minimum reception facility capacity necessary to meet the needs of the particular vessels and cargoes handled at the port or terminal is available.

One commenter stated that industrialized areas by already overloaded with waste disposal problems, while several others thought that the industrialized ports will be better equipped to handle wastes than remote ports. The Coast Guard survey of the chemical industry found that there were firms located near most ports and terminals that handle NLS cargoes and these firms are willing and capable of providing adequate mobile reception facilities.

5. Section 158.140(b)—The Coast Guard would remove paragraph (b) of § 158.140 since this information is included in the proposed mandatory application Forms A and B. Form B has been submitted to OMB for approval. A copy of applications Form A and Form B are attached as Appendix I to the preamble of this proposal and would be available from the COTP.

Five commenters recommended that the terminal be required to indicate on the application form which NLS will be handled at the terminal. The Coast Guard agrees with the commenters and is proposing to require this information on application Form B.

6. Section 158.150—The title of this section would be changed by adding the word "alternatives", to indicate that the text of the proposed standards would allow alternatives if the provisions of Annex I and Annex II are met.

7. Section 158.160—A new title is proposed to more accurately describe the text of the proposed rule. Paragraph (a) would be changed by adding a reference to the application procedure under § 158.140 and a reference to the delegation to the COTP under § 158.130 for reader clarification. Proposed paragraph (c) would add the basis for termination of a Certificate of Adequacy so that one section has the criteria for issuing and terminating a Certificate of Adequacy.

8. Section 158.165—This section has been rewritten to limit the subject matter to the requirements concerning reporting changed information and retaining a copy of the report until the information is reflected in the Certificate of Adequacy. The material previously in paragraphs (a) and (b) relating to the validity of the Certificate of Adequacy and actions to be taken on suspension or revocation, has been relocated to §§ 158.160 and 158.180.

9. Sections 158.170 to 158.180—The suspension and revocation procedures of Part 158 are substantially rewritten and a more detailed procedure in accordance with the mandates of the Act is being proposed.

10. Sections 158.210 to 158.230—The proposed change to these sections would remove the words "number of oceangoing tankers using the port or terminal" in § 158.210 (b) and (c), § 158.220 (b) and § 158.230 (a) and (b). These words have been added to the proposed definition of "daily vessel average". The words "number of oceangoing tankers" in § 158.220 (c) and (d) would be removed and also inserted in the proposed definition of "daily vessel average".

11. Section 158.310(a)(2)—One commenter said, in regard to waste received from vessels, that the Coast Guard and the Environmental Protection Agency (EPA) should preempt any state or local regulation concerning the reception, temporary or handling of hazardous waste that does not conform to Coast Guard requirements or United States agreements to international protocols. Another commenter suggested that preemption of State and local laws is precluded by the enabling legislation. Another commenter suggested that the Coast Guard should identify where State requirements may conflict with the proposed regulations and ensure that regional waste reception facilities will be available for any affected port. The Coast Guard agrees that there is no preemption authority in the Act. Under the Act, Congress has authorized the

Coast Guard to conduct surveys of existing facilities to determine measures needed to comply with MARPOL 73/78. The Coast Guard did survey many State agencies and is not aware of any environmental laws in those States that conflict with the provisions of MARPOL 73/78. The Coast Guard has no authority to make regional reception facilities available; however, there is nothing in these regulations that would prohibit the use of regional reception facilities provided the criteria of adequacy under proposed Subpart C are met.

Five commenters expressed concerns about the need for coordination between the Coast Guard and EPA on issues arising under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), (42 U.S.C. 9601 et seq.) and RCRA. The Coast Guard consults extensively with the EPA, seeking to minimize conflicts that could arise. Another commenter recommended that the Coast Guard enter into a Memorandum of Understanding (MOU) with the EPA on these issues, but a different commenter contended that an MOU is precluded by the Act. The Coast Guard has no need to enter into a MOU with the EPA since the Act is quite clear in stating the jurisdication of each agency. The Coast Guard also disagrees that the law precludes the Coast Guard from entering into a MOU with the EPA since there is nothing in the law that prevents the two agencies from formalizing an agreement, if they determine that a MOU would facilitate carrying out their respective responsibilities.

Numerous commenters expressed a concern over who would be considered a "generator" of any "hazardous waste". The resolution of this issue is solely within the authority of the Administrator of the EPA and questions regarding compliance with RCRA and CERCLA should be referred to that agency. For further information contact the EPA RCRA Hotline, toll free, at 800–424–9346.

12. Section 158.310(a)(4)—Several commenters indicated that there is no demonstrated need for transfer time criteria and suggested that this is a matter for negotiation between the terminal and vessel. The Coast Guard does not agree with this comment. By specifying a transfer time, the Coast Guard is establishing a performance standard for a adequacy of reception facilities and preventing undue delay to ships.

Another commenter suggested that it is inappropriate to have time criteria specified in the regulations without specific knowledge of the waste quantities involved. The Coast Guard agrees with this comment. The proposed transfer time was determined by: (1) Estimating the volume of tank wash water that would be generated during a prewash of a ship's cargo tanks assuming that three average size (1500 cubic meter) cargo tanks would be prewashed; and (2) considering the availability of and type of reception facilities that are expected to be used to meet the demand. One commenter suggested that chemical waste transfers should be completed within two hours after discharge of cargo. The Coast Guard disagrees with this comment. The Coast Guard is proposing to adopt a transfer time requirement of 10 hours because a shorter transfer time would impose a difficult, unnecessary and burdensome requirement on the reception facility and a longer transfer time may be considered undue delay of the ship. In particular, because the hook up and disconnect of several tank trucks is expected to require some time to complete, specifying a faster transfer time could exclude the use of mobile tank trucks, which are expected to meet the bulk of the demand for receiving NLS residue.

13. Section 158.320—Three commenters recommended that the Coast Guard establish reception facility capacity requirements using the IMO "Guidelines on the Provision of Adequate Reception Facilities in Ports" (Guidelines) and information from shipping industry interests. Five commenters recommended that the minimum capacity of the reception facility should not be set too high and the Coast Guard should consider the type of products that a terminal normally handles and the storage, treatment and disposal facilities avaialble at or accessible to the facility. The Coast Guard considered the Guidelines, comments submitted in response to the ANPRM, and the results of a survey conducted of available reception facilities before determining the proposed capacity requirements. The Coast Guard disagrees with the comments that the reception facility capacity be based on the availability of storage, treatment, and disposal facilities. MARPOL 73/78 and the Act assume that wastes would be properly handled. If they can not be, ships must be denied entry. Adequacy must be based on the traffic considerations stated in the Act, such as the numbers and types of ships using the port and terminal, including their principal trade, and alternatives to prewashing.

14. Section 158.330—Annex II was amended in December of 1985. The amendments modified the original approach taken to limit the discharge of NLS at sea which required ships to wash cargo tanks and discharge the tank washings to a reception facility. Under the proposal in CGD 81–101, ships that have pumps to efficiently strip cargo tanks would not be required to prewash cargo tanks after cargo unloading unless the ship carries solidifying or high viscosity Category B or C NLS cargo. The need to prewash cargo tanks would be reduced because more cargo residue will be recovered from the tank and the amount of waste would be reduced. Under the proposal in CGD 81–101, the efficient stripping systems must be tested and proven effective by pumping against a backpressure 101.6 kPa (14.7 pounds per square inch gauge). To ensure that stripping systems are effective when unloading cargo at a port or terminal, an amendment to Regulation 7 of Annex II to MARPOL 73/78 was adopted which makes it necessary for ports and terminals to reduce the backpressure in shore piping systems to the same levels required in the test. The Coast Guard would require ports and terminals to reduce the pressure in the ports or terminals piping system so that this pressure is not exceeded at the vessel's mainfold with an average flow rate of 6 cubic meters per hour. This reduced pressure would ensure that the efficient stripping of the cargo tanks can be accomplished. The Coast Guard is also proposing that ports and terminals meeting this standard could be issued a Certificate of Adequacy without meeting the reception facility capacity standards if they are used only by ships that do not carry solidifying or high viscosity category B or C NLS cargo.

15. Section 158.400—The Coast Guard is proposing to adopt provisions of Regulation 7(3) of Annex II requiring that cargo hoses and piping systems, containing NLS received from ships unloading these substances at the terminal, shall not be drained back to the ship. Since any NLS remaining in the cargo hoses and piping system are sometimes blown back to the cargo tanks thereby increasing the amount of residue left in the ship's tank for disposal at sea and nullifying the validity of residue assessments for the ship's tanks, this proposal would ensure that the cargo residues remaining in the tank are kept to a minimum.

Regulatory Evaluation

This proposal is considered by the Coast Guard to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291.

The Coast Guard has evaluated these regulations under Executive Order 12498. A draft regulatory evaluation has been prepared and placed in the rulemaking docket. Copies of the evaluation may be obtained as indicated under **"FOR FURTHER INFORMATION CONTACT"** and may be inspected or copied as indicated under **ADDRESSES.** The projected costs are summarized as follows:

1. Costs to the Private Sector

a. Administrative costs associated with preparing the application for a Certificate of Adequacy under 33 CFR Part 158, completing the cargo record book under 46 CFR Part 153, and applying for certificates required to carry NLS cargo under 33 CFR Part 151 and 46 CFR Parts 151 and 153.

b. Equipment and construction costs for ports and terminals to meet Subparts C and D under 33 CFR Part 158.

c. Equipment, operating and disposal costs for ships to meet 33 CFR Part 151 and 46 CFR Parts 151 and 153.

2. Costs to the Federal Government

a. Administrative costs for processing applications and issuing Certificates of Adequacy.

b. Personnel costs for enforcement.

Cost information was provided by commenters on the ANPRM including terminal owners, trade associations, and independent waste haulers. Based on information received and estimates that were made by the Research and Special Programs Administration's Transportation Systems Center, the annualized costs of the backpressure requirements could be as high as $7,081,570 (1985 dollars), assuming that each port or terminal requires the most expensive type of system (discussed in the Evaluation) to facilitate efficient stripping. It further assumes that each port or terminal will require five of these systems, but this is highly unlikely. A more realistic estimate is that 200 ports and terminals will require an average of 3 intermediately priced systems costing approximately $3,540 (annualized). The estimated initial capital costs for installation of equipment to facilitate efficient stripping are approximately $12 million. It is assumed that ports and terminals will not incur capital costs to meet the minimum reception facility capacity requirements. But, ports and terminals will incur administrative costs to apply for certificates of adequacy in the amount of $23,405. The total estimated annualized costs of the reception facility requirements and the port and terminal equipment standard are $2,195,255. Coast Guard costs, which include the administrative time to process applications for Certificates of Adequacy and personnel costs to conduct inspections to ensure compliance with the regulations account for $47,850.

The costs to ships as a result of adopting the provisions of Annex II to MARPOL 73/78 include administrative costs for making entries in the cargo record book, and applying for certificates required to carry NLS cargo, equipment costs for ships to meet the efficient stripping requirements and operating costs for ships to prewash cargo tanks and discharge the tank washing residues to a reception facility. Additional costs will be incurred by ships that discharge waste ashore for the treatment, handling, and disposal of the prewash residues. These costs as well as the costs and benefits of §§ 151.31 to 151.45 proposed in this notice are discussed in the preamble of CGD 81-101.

Economic benefits could not be accurately quantified. However, it is expected that these proposed regulations will have a positive economic benefit. The proposed regulations are part of the overall scheme to reduce accidental and intentional damage to the marine environment. The benefits of the port and terminal equipment requirements to facilitate efficient stripping include reducing pollution in the marine environment, increasing the amount of cargo recovered as product, and facilitating vessel compliance with the discharge restrictions proposed in CGD 81-101. These regulations would achieve the most cost-effective solution, that is, reduce waste discharge both at sea and on land by maximizing cargo recovery through efficient stripping. The port and terminal equipment requirements would facilitate efficient stripping of cargo tanks by ships. Ships that are able to efficiently strip their cargo tanks will be able to increase the amount of cargo recovered as product and therefore reduce the need to discharge wastes into the ocean because less waste will be generated. This will also facilitate compliance with the discharge restrictions imposed elsewhere in CGD 81-101 on vessel operations. At the same time, these regulations will allow ports and terminals to minimize disruption of trade and limit involvement in the management of hazardous wastes. Prewashes will not be required in most cases where cargo tanks can be efficiently stripped. This will reduce the need to dispose of wastes ashore because there will be fewer required prewashes.

The economic benefit to the marine industry of the reception facility requirements will be to prevent undue delay to oceangoing ships and to reduce the costs of ports and terminals for reduced berth availability. These proposed reception facility regulations will affect the locations where NLS residues are received by reception facilities, implementing the requirements of Regulation 7 of Annex II of MARPOL 73/78 that adequate reception facilities be available to meet the needs of ships without undue delay. If left unregulated, then ships would not be able to discharge NLS residue at all ports and terminals because reception facilities would not be readily available. Further, in those ports and terminals where reception facilities would be available, the demand for reception facilities would exceed the supply. This would drive up the costs of disposal, contribute to the delay of vessels, and adversely affect compliance with the discharge restrictions imposed on vessels. The Coast Guard projects that oceangoing ships will need to use reception facilities approximately 200 times annually. At $1,000 an hour, the delay to ships awaiting reception facilities could result in lost revenue for ship owners or operators as well as port and terminal operators. However, the capacity requirement, transfer time requirement, and requirement to make arrangements with reception facilities prior to applying for a Certificate of Adequacy should hold delays to a minimum. The actual cost of this regulation will represent a small fraction of revenue to ports and terminals and will have no impact on either domestic or international trade.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, a regulatory flexibility analysis which discusses the impact of the proposal on small entities has been made part of the Draft Regulatory Evaluation. The Coast Guard is proposing to adopt the Small Business Administration's (SBA) definition of "small business" for SBA loans to concerns engaging in transportation and warehousing (13 CFR 121.3-10(f)). Under this definition, a concern is considered small if its annual receipts do not exceed $1.5 million. The Coast Guard does not have accurate information that will indicate how many of the estimated 200 terminals or ports affected by the proposed regulations will be considered small entities. Any person affected by this proposal who believes that they qualify as small entity is requested to submit information on the basis for their qualification and the anticipated impact. The volume of cargo handled is not an

accurate criterion because of the variety of business arrangements of ports and terminals and the different chemicals they handle. Some small ports and terminals are affiliated with large corporations having a substantial monetary interest in the cargo while others are independent contractors for wharfage and warehousing. The Coast Guard, recognizing a potential differential cost impact on small terminals, would allow ports and terminals to apply for Certificates of Adequacy as a group, thus reducing administrative burden on individual operators. Furthermore, the cost for ports and terminals to make arrangements for reception facilities would be proportionate to the number of ships which are handled at the port or terminal that are required to prewash tanks and discharge the residues to reception facility. The applicant needs to apply only once for a Certificate of Adequacy unless it is suspended or revoked.

The costs of this regulation on any individual small firm would be low because a small facility would require the installation of less equipment to facilitate efficient stripping. The total costs of small firms would be low because it is anticipated that few small entities will be affected. The small business impact of the regulations in §§ 151.31 to 151.45 proposed in this notice is discussed in the preamble of CGD 81–101, and has also been found to be minimal. Therefore the Coast Guard certifies that if the proposed rules are adoped, they will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal would change the information collection requirements in the following: Sections 151.09, 158.140, 158.150, 158.165, and 158.190. Revisions have been submitted to Office of Management and Budget (OMB) for the proposed requirements in §151.09 (which has been assigned RCS/OMB number 2115–0544), and for §§ 158.140, 158.150, 158.190 (which have been assigned RCS/OMB number 2115–0543). Due to the changes in analysis discussed above, primarily in the number of ports and terminals estimated to be covered by the regulations, the Coast Guard has requested a change to RCS/OMB number 2115–0543. Due to the increase in number of advance notices made by oceangoing ships requiring reception facilities for residues and mixtures containing NLS, the Coast Guard has requested a change to RCS/OMB number 2115–0544. The Coast Guard is proposing to make use of Form A and Form B mandatory in order to apply for a Certificate of Adequacy under the proposed § 158.140. Form A and Form B would reduce the time necessary to complete and application for a Certificate of Adequacy and reduce the time necessary for the Coast Guard to review the application, which would reduce the total administrative costs. The information collection requirements of the regulations in §§ 151.31 to 151.45 proposed in this notice are discussed in the preamble to CGD 81–101 appearing elsewhere in this issue of the **Federal Register**. Persons desiring to comment on these information collection requirements should submit their comments to: Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES"**.

Environmental Impact

Under MARPOL 73/78, the Act, and regulations proposed elsewhere in this edition of the **Federal Register** (CGD 81–101), oceangoing ships carrying NLS are severely limited in discharging NLS residue into the sea. This is accomplished limiting the amount of cargo residues that remain in the tank upon completion of unloading (efficient stripping) and by requiring the prewashing of tanks and discharge of the tank washings to a reception facility on shore. The reception facility rules in this document do not directly affect the environment, but they are an essential part of an overall scheme to limit pollution of the marine environment and substantially reduce the need to dispose of NLS residue. The port and terminal equipment requirements will help reduce the generation of NLS residue and the type and volume of waste delivered to reception facilities. These proposed facility regulations will affect the locations where NLS residues are received by reception facilities, implementing the requirements of Regulations 7 of Annex II of MARPOL 73/78 that adequate reception facilities be available to meet the needs of ships without undue delay. If left unregulated, then ships would not be able to discharge NLS residue at all ports and terminals because reception facilities would not be readily available. Further, in those ports and terminals where reception facilities would be available, the demand for reception facilities would exceed the supply. This would drive up the costs of disposal, contribute to the delay of vessels, and adversely affect compliance with the discharge restrictions imposed on vessels. A draft environmental assessment and a finding of no significant impact have been prepared and are available as detailed under **"ADDRESSES"** above. The environmental impact of the regulations in §§ 151.31 to 151.45 proposed in this notice is discussed in the preamble to CGD 81–101.

Appendix I—Mandatory Application Form A and Form B and Instructions

General Instructions Application for Certificate of Adequacy for Reception Facilities Form A

1. *General.* The United States as a party to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) is required by Annex I and the Act to Prevent Pollution from Ships (33 U.S.C. 1901) to issue certificates to reception facilities verifying their adequacy to receive oily waste from ships. Regulations implementing the United States waste reception facility program are in 33 CFR Part 158 Code of Federal Regulations.

2. The Certificate of Adequacy remains valid until suspended or revoked.

3. Upon suspension or revocation a Certificate of Adequacy shall be promptly returned to the issuing U.S. Coast Guard Captain of the Port (COTP).

4. The Application, as submitted, shall be permanently attached to and become a part of the Certificate of Adequacy upon issuance.

5. A copy of the Certificate of Adequacy with the Application attached shall; be available at each port and terminal to which it applies and shall be available for inspection by Coast Guard personnel and the master, person in charge or agent of an oceangoing ship using or intending to use the reception facility.

6. A copy of the Certificate of Adequacy shall be attached to the operations manual for marine oil transfer facilities described in 33 CFR 154.300.

7. The terminal/port person in charge identified in the Application shall notify the U.S. Coast Guard Captain of the Port (COTP) in writing within 10 days after any of the reception facility information supplied in Sections 1, 3A, 3G, or 3H of Application Form A changes. The person in charge of the terminal or port shall notify the U.S. Coast Guard COTP in writing within 30 days after any information supplied in Sections 1, 3B, 3C, 3D, 3E, 3F, 3I, or 3J of Form A changes.

8. *Civil Penalties.* A person who after notice and an opportunity for a hearing, is found:

a. To have made a false, fictitious or fraudulent statement or representation in any manner in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation; or

b. To have violated the Act to Prevent Pollution for Ships, or the regulations issued thereunder, shall be liable to the United

States for a civil penalty, not to exceed $25,000 for each violation.

Instructions; the Certificate of Adequacy (COA) Application

The followng instructions for individual line items are provided to assist in completing the Application for a Certificate of Adequacy (COA). If you have any questions or need assistance in completing the Application, please contact the U.S. Coast Guard Captain of the Port (COTP) for your area. A list of definitions, which you may find helpful in completing the Application, is provided in 33 Code of Federal Regulations Part 158 (33 CFR Part 158).

1.A. Indicate terminal if you are applying as a single terminal or indicate port if you are applying as a group of terminals. Do not mark "COTP Designated Port" unless you have a letter from the COTP with such a designation. COTP designation of a facility or an area as a port is for unusual situations. If you have a question as to whether COTP designation as a port applies to your situation, contact the COTP for your area.

1.C.(1) For a terminal enter the company or corporation name. For a port enter for company, corporation, port authority, or organization by which the group of terminals is legally known.

1.C.(3) Enter the name of a person authorized to act in behalf of the terminal or port.

1.C.(5) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization of which the person in charge is a member.

1.D.(1) Those applying as terminals do not have to complete this section, since the information is the same as in 1.C. Ports are to provide this information for each of the terminals indicated in 1.B.

2.A.(1) Enter the company or corporation name of the reception facility.

2.A.(5) Check as many of the types of reception facilities as may be used.

3.A. Enter the value as calculated on the Coast Guard optional worksheet line "AY" or other calculation sheet.

3.B. Enter the value as calculated on the Coast Guard optional worksheet line "AZ" or other calculation sheet. Calculate from vessel traffic at the terminal/port for the last 12 months.

3.C. Describe the waste the reception facility can receive. Enter "oil" for all types of oily waste.

3.D. Describe the ship types or principal trades, e.g., crude tankers, product tankers, container ships, grain ships, fishing vessels, etc.

3.E. Enter a value based upon discharging waste through a single connection. This is necessary since ships are not required to discharge waste through multiple connections. Oily ballast discharge rates may be based on discharging through more than one connection if all of the vessels and reception facilities have this capability.

3.F. Enter a value upon discharging waste through a single connection. This is necessary since ships are not required to discharge waste through multiple connections.

BILLING CODE 4910-14-M

OMB NO. APPROVED 2115-0543

FORM A
APPLICATION FOR A RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR OIL

1. PARTICULARS OF TERMINAL OR PORT

A. APPLYING AS: *(check one)* ☐ Terminal ☐ Port ☐ COTP Designated Port

B. NUMBER OF TERMINALS TO WHICH THIS APPLICATION APPLIES: _____

C. TERMINAL INFORMATION:

(1) NAME OF TERMINAL/PORT _____
(2) ADDRESS OF TERMINAL/PORT _____
_____
_____
(3) NAME OF TERMINAL/PORT PERSON IN CHARGE _____
(4) TITLE/POSITION _____
(5) ORGANIZATION _____
(6) OFFICE PHONE NUMBER ( ) _____

D. INDIVIDUAL TERMINAL INFORMATION: If applying as a port, list the information indicated for each terminal in the port. If more space is needed, continue on a separate sheet and attach to the back of the Application. Signature of person in charge of terminal acknowledges that terminal agrees and consents to being considered as a member of the port, described in section 1, for the purposes of reception facilities. Complete the terminal name, location, etc. below.

(1) NAME OF TERMINAL _____
(a). ADDRESS OF TERMINAL _____
_____
_____
(b). NAME/TITLE PERSON IN CHARGE _____
_____
(c). OFFICE PHONE NUMBER ( ) _____
(d). SIGNATURE TERMINAL PERSON IN CHARGE _____

(2) NAME OF TERMINAL
(a). ADDRESS OF TERMINAL _____
_____
_____
(b). NAME/TITLE PERSON IN CHARGE _____
_____
(c). OFFICE PHONE NUMBER ( ) _____
(d). SIGNATURE TERMINAL PERSON IN CHARGE _____

2. PARTICULARS OF RECEPTION FACILITY. Enter information for each reception facility used by the terminal/port. If necessary, continue on a separate sheet and attach to the back of the Application..

A. (1) NAME OF RECEPTION FACILITY _____
(2) ADDRESS _____
_____
_____

REVERSE OF CG-5401A (9-85)

(3) NAME/TITLE PERSON IN CHARGE _____

(4) OFFICE PHONE NUMBER ( ) _____

(5) TYPE OF RECEPTION FACILITY: Check those that apply.

☐ FIXED MOBILE: ☐ TANK TRUCK ☐ TANK BARGE ☐ OTHER

(Describe other) _____

3. RECEPTION AND TRANSFER REQUIREMENTS:

A. ESTIMATED DAILY CAPACITY OF RECEPTION FACILITY: (metric tons) _____

B. ESTIMATED DAILY CAPACITY REQUIREMENT OF TERMINAL/PORT: (metric tons) _____

C. TYPES OF WASTE THE RECEPTION FACILITY CAN RECEIVE: _____

D. SHIP TYPES OR PRINCIPAL TRADES OF SHIPS VISITING TERMINAL(S): _____

E. OILY BALLAST WASTE TRANSFER RATE (GPM): _____

F. ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE (GPM): _____

G. RECEPTION FACILITY CAN RECEIVE ALL THE OILY BALLAST FROM SHIPS VISITING THE TERMINAL OR PORT WITHIN 10 HOURS OF WASTE TRANSFER COMMENCEMENT. Enter either "YES", "NO", or "N/A". _____

(If entering other than "YES" explain.) _____

H. RECEPTION FACILITY CAN RECEIVE ALL OTHER OILY RESIDUES AND MIXTURES FROM SHIPS VISITING THE TERMINAL OR PORT WITHIN 4 HOURS OF WASTE TRANSFER COMMENCEMENT. Enter either "YES", "NO", or "N/A". _____

(if entering other than "YES" explain.) _____

I. RECEPTION FACILITIES FOR OIL WASTE WILL BE PROVIDED WITHIN 24 HOURS OF NOTIFICATION. Enter either "YES." "NO", or "N/A". _____

(If entering other than "YES" explain.) _____

J. OILY WASTE WILL BE TRANSFERRED PRIOR TO SHIP LEAVING SHIP REPAIR YARD. Enter either "YES," "NO", or "N/A".

(If entering other than "YES", explain) _____

CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR A WASTE RECEPTION FACILITY CERTIFICATE OF ADEQUACY IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE TERMINAL/PORT PERSON IN CHARGE _____

PRINTED OR TYPED NAME OF PERSON IN CHARGE _____

DATE SIGNED _____

BILLING CODE 4910-14-C

General Instructions; Application for Certificate of Adequacy for Reception Facilities; Form B

1. *General.* The United States as a party to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) is required by Annex II and the Act to Prevent Pollution from Ships (33 U.S.C. 1901) to issue certificates to reception facilities verifying their adequacy to receive Residues and Mixtures containing Noxious Liquid Substances (NLS) (NLS Residues) from ships. Regulations implementing the United States waste reception facility program are in 33 CFR Part 158 Code of Federal Regulations.

2. The Certificate of Adequacy remains valid until suspended or revoked.

3. Upon suspension or revocation a Certificate of Adequacy shall be promptly returned to the issuing U.S. Coast Guard Captain of the Port (COTP).

4. The Application, as submitted, shall be permanently attached to and become a part of the Certificate of Adequacy upon issuance.

5. A copy of the Certificate of Adequacy with the the Application attached shall be available at each port and terminal to which it applies and shall be available for inspection by Coast Guard personnel and the master, person in charge or agent of an oceangoing ship using or intending to use the reception facility.

6. The terminal/port person in charge identified in the Application shall notify the U.S. Coast Guard Captain of the Port (COTP) in writing within 10 days after any of the reception facility information supplied in Sections 2, 3A, 3B, 3C, 3F, 3G, 3H, or 3K of Application Form B changes. The person in charge of the terminal or port shall notify the U.S. Coast Guard COTP in writing within 30 days after any information supplied in Sections 1, 3D, 3E, 3I, 3J, or 3K of Form B changes.

7. *Civil Penalties.* A person who after notice and an opportunity for a hearing, is found:

a. To have made a false, fictitious or fraudulent statement or representation in any matter in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation; or

b. To have violated the Act to Prevent Pollution for Ships, or the regulations issued thereunder, shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation.

Instructions—The Certificate of Adequacy (COA) Application

The following instructions for individual line items are provided to assist in completing the Application for a Certificate of Adequacy (COA). If you have any questions or need assistance in completing the Application, please contact the U.S. Coast Guard Captain of the Port (COTP) for your area. A list of definitions, which you may find helpful in completing the Application, is provided in 33 Code of Federal Regulations Part 158 (33 CFR Part 158)

1.A. Indicate terminal if you are applying as a single terminal or indicate port if you are applying as a group of terminals. Do not mark "COTP Designated Port" unless you have a letter from the COTP with such a designation. COTP designation of a facility or an area as a port is for unusual situations. If you have a question as to whether COTP designation as a port applies to your situation, contact the COTP for your area.

1.C.(1) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization by which the group of terminals is legally known.

1.C.(3) Enter the name of a person authorized to act in behalf of the terminal or port.

1.C.(5) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization of which the person in charge is a member.

1.D.(1) Those applying as terminals do not have to complete this section, since the information is the same as in 1.C. Ports are to provide this information for each of the terminals indicated in 1.B.

2.A.(1) Enter the company or corporation name of the reception facility.

2.A.(5) Check as many of the types of reception facilities as may be used.

3.A. Enter the capacity of the Reception Facility to handle the specified wastes.

3.H. Only ship repair yards need complete this line item.

BILLING CODE 4910-14-M

REVERSE OF CG- (7-86)

OMB NO. APPROVED

FORM B

APPLICATION FOR A RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR RESIDUES AND MIXTURES CONTAINING NOXIOUS LIQUID SUBSTANCES (NLS) (NLS RESIDUES)

1. PARTICULARS OF TERMINAL OR PORT

A. APPLYING AS: *(CHECK ONE)* ☐ Terminal ☐ Port ☐ COTP Designated Port

B. NUMBER OF TERMINALS TO WHICH THIS APPLICATION APPLIES: _____

C. TERMINAL INFORMATION:

(1) NAME OF TERMINAL/PORT _____

(2) ADDRESS OF TERMINAL/PORT _____

(3) NAME OF TERMINAL/PORT PERSON IN CHARGE _____

(4) TITLE/POSITION _____

(5) ORGANIZATION _____

(6) OFFICE PHONE NUMBER ( ) _____

D. INDIVIDUAL TERMINAL INFORMATION: If applying as a port, list the information indicated for each terminal in the port. If more space is needed, continue on a separate sheet of paper and attach to the back of the application. The signature of the person in charge of the terminal acknowledges that the terminal agrees and consents to being considered as a member of the port, described in section 1, for purposes of these reception facilities. Complete the terminal name, location, etc. below.

(1) NAME OF TERMINAL _____

(a) ADDRESS OF TERMINAL _____

(b) NAME /TITLE PERSON IN CHARGE _____

(c) OFFICE PHONE NUMBER ( ) _____

(d) SIGNATURE TERMINAL PERSON IN CHARGE _____

(2) NAME OF TERMINAL _____

(a) ADDRESS OF TERMINAL _____

(b) NAME /TITLE PERSON IN CHARGE _____

(c) OFFICE PHONE NUMBER ( ) _____

(d) SIGNATURE TERMINAL PERSON IN CHARGE _____

2. PARTICULARS OF RECEPTION FACILITY. ENTER INFORMATION FOR EACH RECEPTION FACILITY USED BY THE TERMINAL/PORT. IF NECESSARY, CONTINUE ON A SEPARATE SHEET AND ATTACH TO THE BACK OF THE APPLICATION.

A. (1) NAME OF RECEPTION FACILITY _____

(2) ADDRESS _____

DEPT. OF TRANSP., USCG-CG-5401B
LOCAL REPRO

REVERSE OF CG-5401B

(3) NAME /TITLE PERSON IN CHARGE _____

(4) OFFICE PHONE NUMBER ( ) _____

(5) TYPE OF RECEPTION FACILITY: CHECK THOSE THAT APPLY.
☐ FIXED MOBILE: ☐ TANK TRUCK ☐ TANK BARGE ☐ OTHER:
(Describe other) _____

3. RECEPTION AND TRANSFER REQUIREMENTS:

FOR CATEGORY A SOLIDIFYING NLS (NLS RESIDUES);

A. ESTIMATED DAILY CAPACITY OF RECEPTION FACILITY: (cubic meters) _____

FOR CATEGORY CATEGORY B AND C AND NON-SOLIDIFYING CATEGORY A NLS (NLS RESIDUES);

B. ESTIMATED DAILY CAPACITY OF RECEPTION FACILITY: (cubic meters) _____

C. TYPES OF WASTE HANDLED AT TERMINAL/PORT

NAME OF NLS CARGO USE ONLY CARGO NAMES AS GIVEN IN TABLE I, 46 CFR PART 153	EXPECTED FREQUENCY OF CARGO (Specify number of times Terminal/Port receives specified cargo per year)	CATEGORY (A B, OR C)	SOLIDIFYING OR HIGH VISCOSITY (INDICATE "S" FOR SOLIDIFYING OR "HV" FOR HIGH VISCOSITY)

(ANY ADDITIONAL CARGOES SHOULD BE LISTED ON A SEPARATE SHEET AND ATTACHED TO THIS *APPLICATION)*

FOR THE FOLLOWING ITEMS ENTER either "YES," "NO," or N/A"
(If entering other than "YES," explain on a separate attached sheet.)

D. WILL THE TERMINAL/PORT BE CAPABLE OF RECEIVING NOXIOUS LIQUID SUBSTANCE RESIDUES FROM SHIPS AT AN INSTANTANEOUS FLOW RATE OF 6 CUBIC METERS PER HOUR (158.4 GALLONS) WITHOUT THE PRESSURE AT THE MANIFOLD EXCEEDING 101.6 kPa/sec (14.7 pounds per square inch gage). _____

E. RECEPTION FACILITY CAN RECEIVE ALL THE NOXIOUS LIQUID SUBSTANCE RESIDUES FROM SHIPS VISITING THE TERMINAL/PORT WITHIN 10 HOURS OF WASTE TRANSFER COMMENCEMENT. _____

F. RECEPTION FACILITIES FOR NOXIOUS LIQUID SUBSTANCE RESIDUES WILL BE PROVIDED WITHIN 24 HOURS AFTER NOTIFICATION BY A VESSEL INDICATING THE NEED FOR RECEPTION FACILTIES. _____

G. NLS RESIDUES WILL BE TRANSFERRED PRIOR TO SHIP LEAVING SHIP REPAIR YARD. _____

H. RECEPTION FACILITIES WILL BE PROVIDED AT THE UNLOADING TERMINAL/PORT. _____

I. RECEPTION FACILITY HOLDS EACH FEDERAL, STATE, AND LOCAL PERMIT AND LICENSE REQUIRED BY ENVIRONMENTAL LAWS AND REGULATIONS CONCERNING NLS RESIDUES. _____

CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR WASTE RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR RECEPTION FACILITIES RECEIVING NOXIOUS LIQUID SUBSTANCE (NLS) RESIDUES IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE OF TERMINAL/PORT PERSON IN CHARGE _____

PRINTED OR TYPED NAME OF PERSON IN CHARGE _____

DATE SIGNED _____

BILLING CODE 4910-14-C

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Hazardous waste, Oil pollution, Ports, Reception facilities, Terminals, Vessels.

In consideration of the preceding, it is proposed to amend Parts 151 and 158 of Subchapter O of Chapter I of Title 33, Code of Federal Regulations as follows:

Note: Referenced sections marked with an asterisk (ie. 46 CFR 153.382*) are those proposed in CGD 81-101 published elsewhere in this issue of the **Federal Register.**

PART 151—[AMENDED]

1. The authority citation for Part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b), E.O. 11735, 49 CFR 1.46(m) and (hh).

2. By revising the title of Part 151 to read as follows:

PART 151—OIL AND NOXIOUS LIQUID SUBSTANCE REGULATIONS

3. By revising the table of sections of Part 151 to read as follows:

Subpart A—General

Sec.

Subpart B—Oil Pollution

4. By adding a new heading, Subpart A—General. Subpart A consists of §§ 151.01–151.08.

5. By revising § 151.01 to read as follows:

§ 151.01 Purpose.

The purpose of this part is to implement the Act to Prevent Pollution from Ships, 1980, (33 U.S.C. 1901–1911) and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London February 17, 1978. These documents are available from the National Technical Information Service, Springfield, Va. Please include this reference number (ADA 168 505) in your request.

6. By amending § 151.05 by removing the paragraph designations and alphabetizing the definitions and by adding new definitions in proper alphabetical order to read as follows:

§ 151.05 Definitions.

* * * * *

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

"High viscosity Category B NLS" means any Category B NLS having a viscosity of at least 25 mPa.s at 20 °C and at least 25 mPa.s at the time it is unloaded, but does not include solidifying NLSs.

"High viscosity Category C NLS" means any Category C NLSs having a viscosity of at least 60 mPa.s at 20 °C and at least 60 mPa.s at the time it is unloaded, but does not include solidifying NLSs.

"High viscosity NLSs" includes Category A NLS having a viscosity of at least 25 mPa.s at 20 °C and at least 25 mPa.s at the time of unloading, high viscosity Category B NLSs and high viscosity Category C NLSs, but does not include solidifying NLSs.

"NLS Certificate" menas an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued under Annex II of MARPOL 73/78.

* * * * *

"Noxious liquid substance" (NLS) means—

(1) Each substance listed in Table 1 or Table 2 of this part;

(2) Each substance having an "A", "B", "C", or "D" beside its name in the column headed "Pollution Category" in Table 1 of 46 CFR Part 153*; and

(3) Each substance that is identified as an NLS in a written permission issued under 46 CFR 153.900 (d)*.

* * * * *

"Oil-like NLS" means each cargo listed in Table 2 of this part.

* * * * *

"Port" means—

(1) A group of terminals that chooses to act as a unit and be considered a port for the purposes of this part;

(2) A port authority or other organization that chooses to be considered a port for the purposes of this part; or

(3) A place or facility that has been specifically designated as a port by the COTP.

"Prewash" means a tank washing operation that meets the procedure in 46 CFR 153.1120*.

* * * * *

"Residues and mixtures containing NLSs" (NLS residue) means—

(1) Any Category A, B, C, or D NLS cargo retained on the ship because it fails to meet consignee specifications;

(2) Any part of a Category A, B, C, or D NLS cargo remaining on the ship after the NLS is discharged to the consignee, including but not limited to puddles on the tank bottom and in sumps, clingage in the tanks, and substance remaining in the pipes; or

(3) Any material contaminated with Category A, B, C, or D NLS cargo, including but not limited to bilge slops, ballast, hose drip pan contents, and tank wash water.

* * * * *

"Solidifying NLS" means a Category A, B, or C NLS that has a melting point—

(1) Greater than O °C but less than 15 °C and has a temperature, measured under the procedure in 46 CFR 153.908 (a)*, that is less than 5 °C above its melting point at the time it is unloaded; or

(2) 15 °C or greater and has a temperature, measured under the procedure in 46 CFR 153.908 (a)*, that is less than 10 °C above its melting point at the time it is unloaded.

* * * * *

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note.—A ship repair yard is a terminal by definition. A fixed or floating drilling rig or other platform is not a terminal because it is, by definition, a "ship" under § 151.05(q) of this subchapter.

* * * * *

7. By adding § 151.08 to read as follows:

§ 151.08 Denial of entry.

No oceangoing tanker or any other oceangoing ship of 400 gross tons or more, required by § 151.09 to retain on board while at sea, oil or oily residues and mixtures, and no oceangoing ship carrying a Category A, B, or C NLS cargo or NLS residue in cargo tanks that are required to be prewashed under 46 CFR Part 153* may enter any port or

terminal under § 158.110(a) or (b) of this chapter unless—

(a) The port or terminal has a Certificate of Adequacy, as defined in § 158.120 of this chapter; or

(b) The ship is entering under force majeure.

8. By adding a new heading Subpart B—Oil Pollution. Subpart B consists of §§ 151.09–151.25.

9. By amending Part 151 by adding a new Subpart C to read as follows:

Subpart C—Noxious Liquid Substance Pollution

Sec.

Subpart C—Noxious Liquid Substance Pollution

§ 151.31 Where to find requirements applying to oceangoing ships carrying Category A, B, C, and D NLS.

(a) The requirements for oceangoing ships carrying NLSs listed in Tables 1 and 2 are in §§ 151.33 through 151.45.

(b) The requirements for oceangoing ships carrying NLSs not listed in Tables 1 and 2, are in 46 CFR Parts 98, 151, and 153.*

(c) Alternatives to the requirements in this part for oceangoing ships carrying NLSs are in 46 CFR Parts 153.*

§ 151.33 Certificates needed to carry Category C oil-like NLS.

An oceangoing ship may not carry in a cargo tank a Category C oil-like NLS listed in Table 2 unless the oceangoing ship has—

(a) An Attachment for NLSs to the IOPP Certificate Supplement that allows the cargo tank to carry the cargo; or

(b) A Certificate of Inspection or a Certificate of Compliance endorsed under 46 CFR Part 153* to allow the cargo tank to carry the cargo.

§ 151.35 Certificates needed to carry Category D NLS and Category D oil-like NLS.

(a) An oceangoing ship may not carry in a cargo tank a Category D NLS listed in Table 1 unless the ship has—

(1) An NLS Certificate endorsed under § 151.37(b) that allows the cargo tank to carry the cargo; or

(2) A Certificate of Inspection or a Certificate of Compliance endorsed under 46 CFR Part 153* to allow the cargo tank to carry the cargo.

(b) An oceangoing ship may not carry in a cargo tank a Category D oil-like NLS listed in Table 2 unless the ship has—

(1) An Attachment for NLSs to the IOPP Certificate Supplement to allow the cargo tank to carry the cargo;

(2) An NLS Certificate endorsed under § 151.37(a) to allow the cargo tank to carry the cargo; or

(3) A Certificate of Inspection or a Certificate of Compliance endorsed under 46 CFR Part 153* to allow the cargo tank to carry the cargo.

§ 151.37 Obtaining an Attachment for NLSs to the IOPP Certificate Supplement and obtaining an NLS Certificate.

(a) The Coast Guard issues an Attachment for NLSs to the IOPP Certificate Supplement to an oceangoing ship to allow the carriage of a Category C oil-like NLS or a Category D oil-like NLS if the following requirements are met:

(1) The ship must have a Coast Guard approved monitor that is approved for the cargoes that are desired to be carried.[1]

(2) A ship 150m or less in length carrying a Category C oil-like NLS, must meet the damage stability requirements applying to type III hulls in 46 CFR Part 172, Subpart F.

(b) The Coast Guard issues an NLS Certificate endorsed to allow the oceangoing ship to carry a Category D NLS listed in Table 1 or a Category D oil-like NLS listed in Table 2 if the ship has—

(1) An approved Procedures and Arrangements Manual and Cargo Record Book, both meeting the requirements in 46 CFR 153.490;* and

(2) A residue discharge system meeting 46 CFR 153.470,* unless the approved Procedures and Arrangements Manual limits discharge of Category D NLS residue to the alternative provided by 46 CFR 153.1128(e).*

[1] The Coast Guard is in the process of preparing a proposal for specifications for the oil-like NLS cargo monitor.

§ 151.39 Operating requirements: Category D NLS.

The master or person in charge of an oceangoing ship that carries a Category D NLS listed in Table 1 shall ensure that the ship is operated as prescribed for the operation of oceangoing ships carrying Category D NLSs in 46 CFR 153.901, 153.906, 153.909, 153.1100, 153.1104, 153.1106, 153.1124, 153.1126, and 153.1128.*

§ 151.41 Operating requirements for oceangoing ships with IOPP Certificates: Category C and D oil-like NLSs.

(a) No person may discharge an oil-like NLS to the sea from an oceangoing ship having an IOPP Certificate endorsed to allow carriage of the oil-like NLS unless—

(1) The monitor required by § 157.12 of this chapter is set to detect the oil-like NLS; and

(2) A statement that the monitor has been set to detect the oil-like NLS is entered in the Oil Record Book Part II, Cargo/Ballast Operations, required by § 151.25.

(b) The master or person in charge of an oceangoing ship having an IOPP Certificate endorsed to allow the carriage of an oil-like NLS shall ensure that the carriage and discharge of the oil-like NLS meets §§ 157.29, 157.31, 157.35, 157.37, 157.41, 157.45, 157.47, and 157.49 of this chapter.

§ 151.43 Control of discharge of NLS residues.

(a) The master or person in charge of an oceangoing ship that cannot discharge NLS residue into the sea in accordance with 46 CFR 153.1126* or 153.1128* shall ensure that the NLS residue is—

(1) Retained on board; or

(2) Discharged to a reception facility.

(b) If Category A, B, or C NLS cargo or NLS residue is to be unloaded at a port or terminal in the United States, the master or person in charge of each oceangoing ship carrying NLS cargo or NLS residue shall notify the port or terminal at least 24 hours before entering the port or terminal of—

(1) The name of the ship;

(2) The name, category and volume of NLS cargo to be discharged;

(3) If the cargo is a Category B or C high viscosity NLS cargo or solidifying NLS cargo listed in Table 1 of 46 CFR Part 153* with a reference to "§ 153.908(a)" or "§ 153.908(b)" in the "Special Requirements" column of that table, the time of day the ship is estimated to be ready to discharge NLS residue to a reception facility;

(4) If the cargo is any Category B or C NLS cargo not under paragraph (b)(3) of this section, whether or not the ship meets the stripping requirements under 46 CFR 153.481 or 153.482*;

(5) The name and the estimated volume of NLS in the NLS residue to be discharged;

(6) The total volume of NLS residue to be discharged; and

(7) The name and amount of any cleaning agents used.

(c) After the notification required in paragraph (b) of this section is made, the master or person in charge shall notify the COTP whether or not the tank carrying an NLS cargo requires a prewash in the presence of a surveyor.

§ 151.45 Reporting spills of NLS: Category A, B, C, and D.

The master or person in charge of an oceangoing ship that carries an NLS cargo or NLS residue shall comply with the reporting requirements applying to oil under § 151.15, substituting the words "NLS cargo or NLS residue" for the word "oil."

Table 1—List of Category D NLSs Other Than Oil-like Category D NLSs That May Be Carried Under This Part

Ammonium sulfate solution
Amyl alcohol (n-, sec- primary)
sec-Butyl acetate
Bytylene glycol
Gamma Butyrolactone
Calcium alkyl salicylate
Isobutyl formate
Isophorone
Lactic acid
Latex
3-Methoxybutyl acetate
Methyl-tert-butyl ether
Methyl isobutyl ketone
Oleic Acid
Polypropylene gylcols
n-Propyl acetate
n-Propyl alcohol
Propylene glycol methyl ether
Triisopropanolamine
Tripropylene glycol methyl ether
Urea, ammonium phosphate solution

Table 2—List of Category C and D Oil-like NLSs That May be Carried Under This Part

Catetory C

tert-Amylenes
Cyclohexane
P-Cymene
Decene
Diethy Benzene
Diisobutylene
Calcium chloride solutions
Caprolactam
Coconut oil, fatty acid methyl ester
Diacetone alcohol
Diethylene glycol butyl ether acetate
Diethylene glycol ethyl ether acetate
Diethylene glycol methyl ether acetate
Di-ethyl hexyl adipate
Di-ethyl hexyl phthalate
Diisobutyl Ketone
Diisodecyl phthalate
Dinonyl phthalate
Dipropylene glycol methyl ether
Diundecyl phthalate
2-Ethoxy ethanol
Ethyl acetate
Ethyl acetoacetate
Ethylene diamine, tetra-acetic acid, tetrasodium salt
Ethylene glycol butyl ether
Ethylene glycol butyl ether acetate
Ethylene glycol methyl ether
Ethylene glycol methyl ether acetate
Ethylene glycol phenyl ether
2-Ethyl hexanoic acid
Formamide
l-Hexanol
N-Hydroxyethyl ethylene diamine triacetic acid, trisodium salt solution
Isoamyl alcohol
Dipentene
l-Dodecene
Dodecyl benzene
Ethyl benzene
Heptene (mix isomers)
Hexahydrocymol
l-Hexene
2-Methyl butene
2-Methyl-pentene
1-Octene
Olefins (C_6,C_7,C_8)
n-Pentane
2-Pentene
n-Pentene
Phenylxylylethane
n-Propylbenzene
Tetrahydro naphthalene
1,2,3,5-Tetramethylbenzene
Toluene
Xylenes

Category D

Alkylbenzene (C_9 to C_{17} straight or branched chain)
Butene oligomer
Cycloheptane
Decahydronaphthalene
Decane
Diisopropyl naphthalene
Divinyl acetylene
Dodecane
Ethylcyclohexane
Isooctane
Isopentane
Isopropyl cyclohexane
Nonane
Octane
n-Parafins (C_{10} to C_{20})
Undecane

PART 158—[Amended]

10. The authority citation to Part 158 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 49 CFR 1.46(hh).

11. By revising the Title to Part 158 to read as follows:

PART 158—CONTROL OF RESIDUES AND MIXTURES CONTAINING OIL OR NOXIOUS LIQUID SUBSTANCES

12. By amending Part 158 by revising Subpart A to read as follows:

Subpart A—Certificates of Adequacy: Obtaining and Retaining

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Subpart A—Certificates of Adequacy: Obtaining and Retaining

General

§ 158.100 Purpose.

This part establishes the following:

(a) Criteria for determining the adequacy of reception facilities.

(b) Procedures for certifying that reception facilities are adequate for receiving—

(1) Residues and mixtures containing oil from oceangoing tankers and any other oceangoing ships of 400 gross tons or more; or

(2) NLS residue from oceangoing ships.

(c) Standards for ports and terminals to reduce NLS residue.

§ 158.110 Applicability.

Except those ports and terminals that are used only by non-self-propelled tank barges carrying oil that are not configured and are not equipped to ballast or wash cargo tanks while proceeding en route or by ships operating under waivers under 46 CFR 153.491(b)*, this part applies to each port or each terminal located in the United States or subject to the jurisdiction of the United States that is used by—

(a) Oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil; or

(b) Oceangoing ships carrying NLS cargo.

§ 158.120 Definitions and acronyms.

As used in this part:

"Bunker oil" means oil loaded into bunker tanks for use as fuel.

"Captain of the Port" (COTP) means the Coast Guard officer commanding a Captain of the Port Zone described in Part 3 of this chapter.

"Certificate of Adequacy" means a Coast Guard issued Certificate of Adequacy with Form A or Form B or both attached.

"Clean ballast" has the same meaning as in § 157.03(e) of this chapter.

"Commandant" means Commandant, U.S. Coast Guard.

"Daily vessel average" means the total number of oceangoing ships under § 158.110 (a) or (b) or both, serviced over a typical continuous 12 month period, divided by 365.

"Form A" means the application for a reception facility Certificate of Adequacy for oil, as approved by OMB, Coast Guard form USCG-CG-01(A) (9-85) (OMB Approval NO. 2415-D543).[2]

"Form B" means the applicaton for a reception facility Certificate of Adequacy for NLS, as approved by OMB, Coast Guard form USCG-CG-01(B) (OMB Approval No. _____).[2]

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

"High viscosity Category B NLS" means any Category B NLS having a viscosity of at least 25 mPa.s at 20°C and at least 25 mPa.s at the time it is unloaded, but does not include solidifying NLSs.

"High viscosity Category C NLS" means any Category C NLS having a viscosity of at least 60 mPa.s at 20°C and at least 60 mPa.s at the time it is unloaded, but does not include solidifiying NLSs.

"High viscosity NLS" includes Category A NLSs having a viscosity of at least 25 mPa.s at 20°C and of at least 25 mPa.s at the time of unloading, high viscosity Category B NLS and high viscosity Category C NLSs, but does not include solidifying NLSs.

"MARPOL Protocol" (MARPOL 73/78) stands for the International Convention for Prevention of Pollution from Ships, 1973, (done at London, November 2, 1973), modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973 (done at London on February 17, 1978).

"Noxious liquid substance" (NLS) means—

(1) Each substance listed in Table 1 or Table 2 of this part;

(2) Each substance having an "A", "B", "C", or "D" beside it's name in the column headed "Pollution Category" in Table 1 of 46 CFR Part 153*; and

(3) Each substance that is identified as an NLS in a written pemission issued under 46 CFR 153.900 (d)*.

"Oceangoing ship" has the same meaning as in § 151.05(j) of this chapter.

"Oil means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemcials that are subject to the provisions of Annex II of MARPOL 73/78) and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78.

"Person" has the same meaning as in § 151.05(n) of this chapter.

"Person in charge" means an owner, operator, or a person authorized to act on behalf of a port or terminal.

Note.—The "person in charge" under this part is not necessarily the same person as the "person in charge" referred to in Parts 154, 155, and 156 of this chapter (as defined in § 154.105 of this chapter).

"Prewash" means a tank washing operation that meets the procedure in 46 CFR 153.1120*.

"Port" means—

(a) A group of terminals that chooses to act as a unit and be considered a port for the purposes of this part;

(b) A port authority or other organization that chooses to be considered a port for the purposes of this part; or

(c) A place or facility that has been specifically designated as a port by the COTP.

"Reception facility" means anything capable of receiving shipboard residues and mixtures containing oil, NLS residue, or both including but not limited to—

(a) Fixed piping that conveys wastes from the ship to a storage or treatment system;

(b) Tank barges, railroad cars, tank trucks, or other mobile facilities; and

(c) Any combination of fixed and mobile facilities.

"Residues and mixtures containing NLSs" (NLS residue) means—

(1) Any Category A, B, C, or D NLS cargo retained on the ship because it fails to meet consignee specificiations;

(2) Any part of a Category A, B, C, or D NLS cargo remaining on the ship after the NLS is discharged to the consignee, including but not limited to puddles on the tank bottom and in sumps, clingage in the tanks, and substance remaining in the pipes; or

(3) Any material contaminated with Category A, B, C, or D NLS cargo, including but not limited to bilge slops, ballast, hose drip pan contents, and tanks wash water.

"Segregated ballast" has the same meaming as contained in § 157.03(r) of this chapter.

"Ship" means the same meaning as contained in § 151.05(q) of this subchapter.

"Solidifying NLS" means a Category A, B, or C NLS that has a melting point—

(1) Greater than 0 °C but less than 15 °C and has a temperature, measured under the procedure in 46 CFR 153.908 (a)*, that is less than 5 °C above its melting point at the time it is unloaded; or

(2) 15 °C or greater and has a temperture, measured under the procedure in 46 CFR 153.908 (a)*, that is less than 10 °C above its melting point at the time it is unloaded.

"Tank barge" has the same meaning as contained in 46 CFR 30.10-65.

"Tanker" means a ship constructed or adapted primarily to carry oil bulk in the cargo spaces.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note.—A ship repair year is a terminal by definition. A fixed or floating drilling rig or other platform is not a terminal because it is, by definition, a "ship" under § 151.05(q) of this chapter.

"The Act" means the Act to Prevent Pollution from Ships (94 Stat. 2297, 33 U.S.C. 1901 *et seq*).

§ 158.130 Delegations.

Each COTP is delegated the authority to—

(a) Conduct an inspection of each reception facility for which an application under § 158.140 is submitted to determine if it meets Subpart B of this part or Subpart C of this part, or both;

(b) If Form B is submitted, conduct an inspection of each port or terminal to determine if it meets § 158.330;

[2] Application forms A and B for the certificate of adequacy an available from the Captain of the Port.

(c) After determining that the reception facility passes the inspection under paragraph (a) of this section, and the port or terminal passes the inspection under paragraph (b) of this section, issue a Certificate of Adequacy for the port or terminal;

(d) Grant waivers under § 158.150;

(e) Designate ports; and

(f) Except when a ship is entering under force majeure, deny entry to those ships listed under § 158.110 (a) or (b) to each port or terminal to which this part applies that does not have a Certificate of Adequacy.

§ 158.140 Applying for a Certificate of Adequacy.

(a) Each port or terminal under this part must have a Certificate of Adequacy for its reception facilities to let ships under § 158.110 (a) or (b) continue to call at the port or terminal. To apply for a Certificate of Adequacy, the applicant must apply to the COTP of the Zone in which the port or terminal is located on—

(1) Form A, for each port or terminal used by ships under § 158.110 (a); and

(2) Form B, for each port or terminal used by ships under § 158.110 (b).

§ 158.150 Waivers and alternatives.

(a) If the person in charge believes that a requirement in this part is unreasonable or impracticable for the port's or terminal's operations, the person in charge may submit a request for a waiver to the COTP. This application must—

(1) Be in writing; and

(2) Include the—

(i) Reasons why the requirement is unreasonable or impracticable;

(ii) Proposed alternatives that meet MARPOL 73/78; and

(iii) Additional information requested by the COTP.

(b) If the COTP allows the alternative proposed under paragraph (a)(2)(ii) of this section, the waiver—

(1) Is in writing; and

(2) States each alternative that applies and the requirement under this part for which the alternative is substituted.

(c) The person in charge shall ensure that each waiver issued under paragraph (b) of this section is attached to the Certificate of Adequacy issued for the port or terminal.

§ 158.160 Issuance and termination of a Certificate of Adequacy.

(a) After reviewing the application made under § 158.140, the COTP conducts an inspection to determine the following:

(1) When the application is made on Form A, whether or not the reception facility meets Subpart B of this part.

(2) When the application is made on Form B, whether or not the reception facility and the port or the reception facility and the terminal meets Subpart C of this part.

(b) If the inspections under paragraph (a) of this section are passed, and the Administrator of the Environmental Protection Agency (EPA) or his or her designee concurs, the COTP—

(1) Issues of Certificate of Adequacy to the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons for the denial.

(c) The Certificate of Adequacy has attached to it any waivers that are granted under § 158.150 when the Certificate of Adequacy is issued.

(d) Each Certificate of Adequacy remains valid until—

(1) Suspended;

(2) Revoked; or

(3) This part no longer applies to the port or terminal.

§ 158.163 Reception facility operations.

(a) Each person in charge and each person who is in charge of a reception facility shall ensure that the reception facility does not operate in a manner that violates any requirement under this part.

(b) A copy of a Certificate of Adequacy issued for the port or terminal must be—

(1) At each port and terminal under § 158.110; and

(2) Available for inspection by the COTP and the master, person who is in charge, or the agent of an oceangoing ship.

(c) Ports and terminals required to have an Operations Manual under this chapter or 46 CFR Chapter 1 must have a copy of the Certificate of Adequacy issued for the port or terminal, including any waivers, attached to that Operations Manual.

§ 158.165 Certificate of Adequacy: Change of information.

(a) Except as required in paragraph (b) of this section, the person in charge shall notify the COTP in writing within 10 days after any information required in sections 2, 3A, 3G, or 3H, of Form A or Section 2, 3A, 3B, 3C, 3F, 3G, 3H, or 3K of Form B changes.

(b) The person in charge shall notify the COTP in writing within 30 days after any information required in sections 1, 3B, 3C, 3E, 3F, 3I, or 3J. of Form A or Section 1, 3D, 3E, 3I, 3J, or 3K of Form B changes.

(c) The person in charge shall maintain at the port or terminal a copy of the information submitted under paragraphs (a) and (b) of this section until a corrected Certificate of Adequacy is received from the COTP.

Suspension and Revocation

§ 158.170 Grounds for suspension.

The COTP may suspend a Certificate of Adequacy if—

(a) Deficiencies recur or significantly affect the adequacy of the reception facility;

(b) Continued operations will result in undue delay to ships calling at the port or terminal under § 158.110 (a) or (b);

(c) In those ports and terminals under § 158.110(b), there is a failure to accept tank wash water from a ship after it's cargo tanks are prewashed in accordance with 46 CFR 153.1120;* or

(d) There is a substantial threat of discharge of oil or NLS into or upon the navigable waters of the United States or adjoining shorelines.

§ 158.172 Notification of a suspension order.

(a) If the COTP has grounds for an immediate suspension of or is considering suspending a Certificate of Adequacy, the COTP notifies the person in charge of the intended action. Each notification of a suspension order, whether oral or written, includes—

(1) The grounds for the suspension;

(2) The date when the suspension becomes effective; and

(3) Information on how the suspension may be withdrawn, including all corrective actions required.

(b) If the suspension order is made orally, the COTP issues a suspension order in writing within five days after the initial notification.

§ 158.174 Suspension of a Certificate of Adequacy: Procedure.

(a) If no evidence or arguments are submitted in response to a notification of a suspension order, the suspension is effective on the date stated in the order.

(b) If any petition for withdrawing a suspension order is submitted in response to a notification of a suspension order, the COTP considers the evidence or arguments and notifies the person in charge of any action taken including—

(1) Denial of the petition for withdrawing a suspension order;

(2) Initiation of civil or criminal penalty action under § 1.07 of Part 1 of this chapter; or

(3) Withdrawing the suspension order.

§ 158.176 Effect of suspension of a Certificate of Adequacy.

After the COTP notifies the person in charge and places a suspension order in

effect, the COTP denies entry of ships to the port or terminal while the Certificate of Adequacy is suspended.

§ 158.178 Actions during a suspension.

(a) If a Certificate of Adequacy is suspended for longer than a five day period, the person in charge shall return it to the COTP within five days after the suspension becomes effective.

(b) After the suspension is in effect, the COTP may—

(1) Terminate the suspension order after receiving information from the person in charge that corrective action has been taken; or

(2) Revoke the Certificate of Adequacy if no significant action is undertaken by the person in charge to meet any measures ordered by the COTP.

§ 158.180 Certificate of Adequacy: Procedures after termination.

(a) If a Certificate of Adequacy is revoked, the person in charge shall return it to the COTP within five days after the revocation becomes effective.

(b) When this part no longer applies to the port or terminal, the person in charge shall return the Certificate of Adequacy to the COTP within 30 days after this part no longer applies.

(c) After the Certificate of Adequacy has been returned to the COTP under paragraph (a) or (b) of this section, an application for a new Certificate of Adequacy may be submitted under § 158.140.

Appeals and Penalties

§ 158.190 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (e) of this section, any person not satisfied with a ruling after having it reconsidered under paragraph (a) of this section may—

(1) Appeal that ruling in writing within 30 days after the ruling to the Coast Guard District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (e) of this section, any person not satisfied with this ruling may—

(1) Appeal that ruling in writing within 30 days after the ruling to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC, 20593; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) After reviewing the appeal submitted under paragraph (c) of this section, the Chief, Office of Marine Safety, Security and Environmental Protection issues a ruling which is final agency action.

(e) If the delay is presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 158.195 Penalties.

(a) Section 9 (a) and (b) (33 U.S.C. 1908) of the Act states:

(a) A person who knowingly violates the MARPOL Protocol, this chapter or the regulations issued thereunder shall, for each violation, be fined not more than $50,000 or be imprisoned for not more than 5 years, or both.

(b) A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) Violated the MARPOL Protocol, this chapter, or the regulations issued thereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation; or

(2) Made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol, this chapter, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation. Each day of a continuing violation shall constitute a separate violation. The amount of the civil panalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require.

(b) Civil and criminal penalty procedures are in Subpart 1.07 of Part 1 of this chapter.

13. By revising § 158.200(a) to read as follows:

§ 158.200 General.

(a) Except as allowed in paragraph (b) of this section; the facility used to meet Regulation 12 of Annex I to MARPOL 73/78 must—

(1) Be a reception facility as defined under § 158.120 that is available at the port or terminal;

(2) Hold each Federal, State, and local permit and license required by environmental laws and regulations concerning residues and mixtures containing oil; and

(3) Be capable of—

(i) Receiving residues and mixtures containing oil from oceangoing ships within 24 hours after notice by that ship;

(ii) Completing the reception of oily ballast from the ship in less than 10 hours after waste transfer operations begin; and

(iii) Completing the reception of other residues and mixtures containing oil in less than 4 hours after the transfer operation begins.

* * * * *

14. By revising § 158.210 (b) and (c) to read as follows:

§ 158.210 Ports and terminals loading crude oil.

* * * * *

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily vessel average, whichever quantity is greater; and

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading crude oil at the port or terminal that do not have clean ballast tanks (CBT), segregated ballast tanks (SBT), or crude oil washing (COW) meeting Part 157 of this subchapter, multiplied by one or the daily vessel average, whichever quantity is greater.

15. By revising § 158.220(b), (c), and (d) to read as follows:

§ 158.220 Ports and terminals loading more than 1,000 metric tons of oil other than crude oil or bunker oil.

* * * * *

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily vessel average, whichever quantity is greater;

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, at the port or terminal, that do not have CBT or SBT meeting Part 157 of this subchapter, multiplied by one or the daily vessel average, whichever quantity is greater; and

(d) Cargo residue in the amount of 0.2% of the total cargo capacity of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, from the port or terminal, multiplied by one or the daily vessel average, whichever quantity is greater.

16. By revising § 158.230(a) and (b) to read as follows:

§ 158.230 Ports and terminals other than ports and terminals under §§ 158.210, 158.220, and 158.240.

* * * * *

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons), or 1 metric ton (1.1 short tons) multiplied by the daily vessel average, whichever quantity is greater; and

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily vessel average, whichever quantity is greater.

17. By amending Part 158 by revising the heading to Subpart C and adding § 3158.300–158.330 to read as follows:

Subpart C—Criteria for Certifying that a Port's or Terminal's Facilities are Adequate for Receiving NLS Residue

Sec.

Subpart C—Criteria for Certifying that a Port's or Terminal's Facilities are Adequate for Receiving NLS Residue

§ 158.300 Purpose.

The purpose of this subpart is to supply the criteria needed for ports and terminals under § 158.110(b) to meet Regulation 7 of Annex II to MARPOL 73/78.

§ 158.310 Reception facilities: General.

(a) Except as allowed in paragraph (b) of this section, each reception facility, in order to pass the inspection under § 158.160, must—

(1) Be a reception facility as defined under § 158.120;

(2) Be available at the port or terminal;

(3) Meet the requirements of § 158.320;

(4) Hold each Federal, State, and local permit and license required by environmental laws and regulations concerning NLS residue;

(5) Be capable of receiving NLS residue from an oceangoing ship within 24 hours after notice by that ship; and

(6) Be capable of completing the transfer of NLS residue within 10 hours after the transfer begins

(b) A reception facility for a ship repair yard does not have to meet the requirements of paragraphs (a)(5) and (6) of this section if it is capable of completing transfer of NLS residue from an oceangoing ship before the ship departs from the yard.

§158.320 Reception Facilities: Capacity and exceptions.

(a) Except as allowed in paragraph (b) of this section, each port and each terminal that is used by ships that carry Category A, B, or C NLS cargo must have a reception facility that meets the following:

(1) Except as required in paragraph (a)(2) of this section, for each Category A or high viscosity or solidifying Category B or C NLS cargo listed in Table 1 of 46 CFR Part 153* with a reference to "§153.908(a)" or "§153.908(b)" in the "Special Requirements" column of that table and unloaded at the port or terminal within a typical continuous 12 month period before application is made for a Certificate of Adequacy, the reception facility must be capable of receiving 50 cubic meters (13,210 gallons) of NLS residue.

(2) For each Category A NLS cargo that is a solidifying NLS listed in Table 1 of 46 CFR Part 153* with a reference to "§ 153.908(a)" in the "Special Requirements" column of that table and unloaded at the port or terminal within a typical continuous 12 month period before application is made for a Certificate of Adequacy, the reception facility must be capable of receiving 75 cubic meters (19,810 gallons) of NLS residue.

(b) The port or terminal need only meet § 158.330 if it is used by ships that transfer only Category B or C NLS cargo that is not high viscosity Category B or C NLS or not Category B or C solidifying NLS.

§ 158.330 Part and Terminals: Equipment.

Each port and terminal, in order to pass the inspection under § 158.160, must—

(a) Be capable of receiving NLSs from a ship during stripping operations at an average flow rate of 6 cubic meters (1584 gallons) per hour without the backpressure at the ship's manifold exceeding 101.6 kPa (14.7 pounds per square inch gauge) pressure; and

(b) Have an instruction manual that lists the equipment and procedures for meeting paragraph (a) of this section.

18. By amending Part 158 by adding a new Subpart D to read as follows:

Subpart D—Port and Terminal Operations

Sec.

Subpart D—Port and Terminal Operations

§ 158.400 Draining cargo area and piping systems.

The person in charge shall ensure that each cargo hose and each piping system containing NLS received from each oceangoing ship under § 158.110(b) is not drained back into the ship.

§ 158.420 Following instruction manual.

The person in charge shall ensure that the instruction manual under § 158.330(b) is followed during the transfer of NLS.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

August 22, 1986

[FR Doc. 86–21592 Filed 9–25–86; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Parts 98, 151, 153, and 172

[CGD 81–101]

Pollution Rules for Ships Carrying Hazardous Liquids

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is implementing Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) by proposing design and operating requirements for all ships that are oceangoing United States ships or are foreign ships and trading in United States waters, and that carry bulk cargo of noxious liquid substances. The requirements would control operational pollution and reduce the chance of accidental pollution from ships carrying the cargoes.

DATES: 1. Comments must be received on or before November 10, 1986.

2. The Coast Guard will hold a public seminar on October 30, 1986 to discuss and answer questions about this proposal. Those interested in attending must notify Ms. Kathy Barylski, U.S. Coast Guard (G–MTH–1/12), Washington, DC 20593–0001, telephone (202)–267–1217 by 3:30 pm, October 24, 1986. Written comments or questions desired to be discussed at this seminar

may be submitted to the location in **ADDRESSES** until October 24, 1986.

ADDRESSES: 1. Comments should be submitted to: Commandant (G-CMC/21) (CGD 81-101), United States Coast Guard, Washington, DC 20593. Between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Environmental and Economic Impact Assessments and Navigation and Vessel Inspection Circular 8-86 are available at this same location.

2. The public seminar to discuss and answer questions about the proposal is open to the public, but attendees must pre-register as described under **DATES** above. The seminar will be held from 9:30 a.m. to 2:30 p.m. in the FAA auditorium, 3rd floor, 800 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Query, Office of Marine Safety, Security, and Environmental Protection, telephone (202)-267-1217. Normal working hours are from 7:30 a.m. until 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 81-101), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. If an acknowledgement is desired, a stamped self-addressed postcard should be enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requests in writing are received from persons raising genuine issues and desiring to comment orally at a public hearing and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Seminar

The Coast Guard will hold a seminar as described under **DATES** and **ADDRESSES** above. The Coast Guard will explain how the proposal implements Annex II of MARPOL 73/78, but the Coast Guard will not accept comments for the docket on this proposal. Comments for the docket on this proposal must be submitted as described in the first paragraph under **SUPPLEMENTARY INFORMATION** or in a public hearing should the Coast Guard decide to hold such a hearing.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Robert M. Query, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion of the Proposed Regulation

The United States has ratified the "International Convention for the Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973), as modified by the Protocol of 1978, relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, February 17, 1978)," referred to in this preamble as MARPOL 73/78, and its first two technical annexes, Annex I and Annex II. Under the Act to Prevent Pollution from Ships (the Act) (33 U.S.C. 1901), the Secretary of Transportation was given the task of implementing and enforcing MARPOL 73/78 and the two annexes; the Secretary delegated this task to the Coast Guard (49 CFR 1.46(hh)). Annex I of MARPOL 73/78 was implemented several years ago when the Coast Guard published requirements controlling the accidental and operational discharge of oil by ships (33 CFR Parts 151 and 157). Implementation of Annex II of MARPOL 73/78, which controls accidential and operational discharge of noxious liquid substances normally the result of cargo tank cleaning, is the subject of this proposed rulemaking and second rulemaking elsewhere in this edition of the **Federal Register**. The changes to Title 46 CFR in this rulemaking affect ships that carry noxious liquid substances (NLSs). The changes in the other rulemaking affect principally reception facilities for NLSs.

The Coast Guard published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** of January 13, 1983 (48 FR 1519) representing comments from the public on how best to implement the requirements in Annex II of MARPOL 73/78. Six comments were received, of which four were responses to the request for information on cargoes for which the Coast Guard had little data. The remaining two comments were general but supportive. There were no specific responses to the other areas for which the Coast Guard requested information. The ANPRM described the implementation of Annex II of MARPOL 73/78 as it existed at the time.

Recent Amendments to Annex II of MARPOL 73/78

Since the publication of the ANPRM, the requirements controlling operational discharge under Annex II have been significantly amended.

In its original form, Annex II limits the quantities of NLSs vessels may discharge to the sea and identifies which ports will require reception facilities for NLSs. NLSs regulated by Annex II are assigned to one of four categories (A, B, C or D) according to the aquatic toxicity of the NLS and other hazards to the marine environment. Restrictions on discharging NLSs into the sea vary according to the NLS category with the most stringent restrictions applying to Category A NLS cargo. When a tank having contained a Category A NLS cargo is washed, the waste water resulting from cleaning must be discharged to a reception facility until the concentration of the NLS cargo in the wash water is below a specified value (generally 0.1%). the residues of Category B NLS cargo may be discharged to the sea provided the quantity of residue remaining is less than the greater of 1 cubic meter or 1/3000 of the tank capacity. If the tank is to be washed and the quantity of residue exceeds this level, the resultant washings must be discharged to a reception facility. Similarly, the residues of Category C NLS cargo may be discharged to the sea provided the quantity of residue remaining is less than the greater of 3 cubic meters or 1/1000 of the tank capacity. Again, quantities of residue exceeding this level must be discharged to a reception facility. The Annex places no limits on the quantities of residues and mixtures of Category D NLSs which may be discharged to the sea and no reception facility requirements result from trasporting Category D NLS cargoes.

To ensure that ships can dispose of tank washings which may not be discharged at sea, Annex II also requires that reception facilities be provided in chemical ports where vessels carrying NLSs are loaded and unloaded and in ship repair ports servicing such vessels.

The U.S. conducted a thorough analysis of the original Annex II system of requirements. This analysis included actual shipboard application of the Annex II requirements and heavy involvement by the chemical industry through the Coast Guard's Chemical

Transportation Advisory Committee. As a result, the Coast Guard concluded that the original requirements were—

1. Unduly burdensome to ships' crews;
2. Not easily verified and thus difficult to enforce; and
3. Likely to result in a temporary and unnecessarily high reception facility capacity.

Based on these concerns the U.S. took steps at IMO to correct these problems and in a U.S. position paper which led to the revised Annex II requirements, particular note was taken of the reception facility problems in stating:

> A number of existing ships have tanks which are fitted with inefficient pumping systems which will retain excessive quantities of residues (more than 1 or 3 cubic metres of residue for Category B and C substances respectively) even when easily pumpable noxious substances are carried. Under the present system, tanks containing these excessive residues must be prewashed and discharged to reception facilities. When Annex II is implemented these existing ships will generate an initial high demand for reception facilities that subsequently will decrease as these ships are encouraged to retrofit improved stripping capabilities due to the high cost of waste disposal or are replaced with newer ships having efficient stripping systems. *For many ports, provision of reception facilities, adequate to meet this initial demand, will be very costly and due to the decreasing demand, will not be cost effective.* While the United States recognizes that the need for reception facilities for Category B and C substances cannot be entirely eliminated; it is our view that this transient need for reception facilities should be minimized as much as possible at the time the Annex enters into force.

As a consequence of the U.S. position paper, major amendments to Annex II were made. Annex II as amended requires tanks of new ships (those built after June 30, 1986) that are certified by the signatory country to carry Category B and C NLSs to be fitted with efficient stripping systems to reduce residues in cargo tanks to extremely low levels, so that quantities remaining to be discharged at sea will be well below the permissible Annex II amounts. For new ships, this will serve to eliminate reception facility demand stemming from the transport of almost all Category B and C NLSs at the time Annex II becomes effective. The amendments reduce the enforcement burden the Annex places on signatory governments. This provision carries the added environmental benefit of reducing the total quantity of chemical waste discharged at sea.

For existing ships (those built before July 1, 1986), the amendments require a demonstration that, for each tank carrying Category B and C NLSs, the amount of cargo residue, retained can be reduced to a level acceptable for environmentally safe disposal at sea (i.e., 1 cubic meter for Category B, 3 cubic meters for Category C). The carriage of Category B or C NLS cargo will be prohibited in tanks not meeting these mininum pumping efficiency requirements. This amendment eliminated the high demand for reception facilities with the earlier version of Annex II. The amendments also require existing ships to improve their pumping efficiency by 1994 so that tanks carrying NLSs may also be efficiently stripped, though not at the same levels as new ships. The 1994 requirement for efficient stripping eliminates Coast Guard concerns over enforcement for existing ships. While these amendments will increase costs for some ships, the Coat Guard believes this cost is more than offset by the benefits of reduced demand for reception facilities and ultimate waste disposal, by the simplification of shipboard procedures, and by the savings in lost cargo provided by the improved stripping systems.

The amendments to Annex II have been approved by IMO. Uder the tacit amendment procedures of MARPOL 73/78, the amendments to Annex II will become effective April 6, 1987 unless sufficient objections are filed by October 6, 1986.

In Implementing Annex II, the proposed regulations would include requirements developed by IMO that are contained in the *Standards for Procedures and Arrangements* (the Standards), and amendments to the *IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk* and the *IMO International Code for the Construction and Equipment of Ships Carrying Danagerous Chemicals in Bulk* (the last two codes collectively referred to as the Bulk Chemical Codes). The Standards for C NLS cargo will be prohibited in tanks not meeting these minimum pumping efficiency requirements. This amendment eliminates the high demand for reception facilities with the earlier version of Annex II. The amendments also require existing ships to improve their pumping efficiency by 1994 so that tanks carrying NLSs may also be efficiently stripped, though not at the same levels as new ships. The 1994 requirement for efficient stripping eliminates Coast Guard concerns over enforcement for existing ships. While these amendments will increase cost for some ships, the Coast Guard believes this cost is more than offset by the benefits of reduced demand for reception facilities and ultimate waste disposal, by the simplification of shipbord procedures, and by the savings in lost cargo provided by the improved stripping systems.

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These proposals for implementing regulations are more detailed in many places than MARPOL 73/78 and the Standards. The Coast Guard has attempted to elaborate on the MARPOL 73/78 provisions only when the source documents lack the detail required of a regulation. To aid interested persons in comparing MARPOL 73/78, the Standards, and the Coast Guard's draft regulations, a cross-reference table is included at the end of this preamble.

Because Annex II imposes requirements on terminals and ports as well as on ships, the Coast Guard is publishing an NPRM elsewhere in this issue of the Federal Register that would amend Title 33 CFR, proposing criteria for determining the adequacy of reception facilities, among other things.

Changes to Part 98

It is possible that some NLSs could be carried under Subparts 98.30 (Handling and Stowage of Portable Tanks) or 98.35 (Portable Tanks Constructed Before

October 1, 1974 That Carry Combustible Liquids) of Title 46, CFR. The Coast Guard intends to include in the final rule changes to these subparts that would require ships carrying NLSs under either subpart to meet the requirements proposed for NLSs under Part 153 in §§ 153.470 through 153.491. The Coast Guard would also include a requirement in each subpart that these ships meet the operating requirements applying to the carriage of NLSs in §§ 153.900, 153.901, 153.903, 153.906, 153.908, 153.909, 153.1100 through 153.1132, and 153.1600 through 153.1608 of Part 153. These changes would make Part 98 compatible with Part 153 and the requirements of Annex II of MARPOL 73/78.

Changes to Part 151

Some changes to 46 CFR Part 151 would be necessary to accommodate Annex II.

The authority citation for Part 151 would be revised to include the citation for the regulatory authority in the legislation implementing MARPOL 73/78, 33 U.S.C. 1903(b), and the Secretary of Transportation's delegation of the authority to the Coast Guard, 49 CFR 1.46(hh).

Table 151.05 would be revised by adding new cargoes and moving some cargoes presently regulated in Parts 30–35 to Part 151. These changes would apply standards to an inland barge carrying a noxious liquid substance similar to those applying to a ship carrying the same cargo.

Two sections would be added to Part 151 that would provide equipment and operating requirements for carrying Category D NLSs on oceangoing, non-self-propelled ships under Part 151. These additions would make Part 151 compatible with Part 153.

Changes to Part 153

The authority citation for 46 CFR Part 153 would be revised to include the implementing legislation for MARPOL 73/78 (33 U.S.C. 1903(b)) and the Secretary of Transportation's delegation of the authority to the Coast Guard, 49 CFR 1.46(hh). One of the effects of the implementing legislation was to add as a category under the broader term "hazardous materials" the category "noxious liquid substance." However, this category of hazardous material was omitted when Title 46 U.S.C. was codified. The Coast Guard has proposed to retain noxious liquid substances as a class of hazardous material by determining them to be hazardous materials, a point discussed with the discussion of changes to the "Definitions" section of Part 153. Thus ships carrying noxious liquid substances would be required to meet the requirements applying to hazardous materials in Part 153 but not all hazardous materials would be required to be carried in ships meeting the requirements for noxious liquid substances. Those requirements that would apply only to noxious liquid substances are clearly indicated in the proposal.

The title of the part would be revised to read "Ships Carrying Bulk Liquid Hazardous Materials."

To be consistent in the references to Table 1, the Table of Special Requirements, all occurrences of the words "Table I" using the Roman "one" would be replaced with the words "Table 1" using an Arabic "one."

A section would be added to list all the references incorporated as part of the regulation. Material that is approved by the **Federal Register** for incorporation by reference is on file at the Office of the Federal Register, Washington, DC 20408, and at the United States Coast Guard, Marine Technical and Hazardous Materials Division, Washington, DC 20593. In applying Part 153, the Coast Guard would refer only to standards referenced in this list.

Most of the proposed requirements can be traced directly to Annex II or the Standards using the cross reference table in this preamble. However, some proposed requirements cover details not considered in the IMO sources; cover implementation tasks peculiar to the United States regulations, or require some additional explanation. These particular proposals are discussed in the following paragraphs.

Section 153.1 Applicability. Part 153 would be revised to provide an applicability that is compatible with both laws that the part would implement. The Act applies only to seagoing ships, while 46 U.S.C. 3703 applies to ships in coastwise and inland waters as well. The Coast Guard has used the term "oceangoing" rather than "seagoing" in this proposal to be consistent with the terminology used in the implementation of Annex I to MARPOL 73/78 in 33 CFR Parts 151 and 158. The Coast Guard means by "oceangoing" those United States ships trading more than three miles offshore. Since barges fall within the Annex II term "ship," the Coast Guard is proposing to apply Part 153, with the exception of fire protection equipment, to oceangoing barges. (See the comments on § 153.460.)

Section 153.2 Definitions. Several new terms would be added to the definitions in Part 153. Most of these are related to MARPOL 73/78 requirements.

The term "built" is taken from Annex II by combining the definitions of "ship constructed" and "similar stage of construction."

The washing "cycle" of a tank washing machine is an ambiguous term because tank washing machines typically have two planes of rotation and the cycle could be taken to mean a rotation in either plane. As proposed, the term "cycle" is intended to mean the rotation of the tank wahing machine at least once in each of the two planes.

The definition of "hazardous material" is based on the shipping law under which the safety regulations are issued, which is in 46 U.S.C. 2101(14). The definition includes all those liquids that are flammable, combustible, designated hazardous substances by EPA under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)), designated hazardous materials under section 104 of the Hazardous Material Transportation Act (HMTA) (49 U.S.C. 1803), and NLSs under Annex II. This last group of hazardous materials, the NLSs, is not listed in 46 U.S.C. 2101(14). The list of hazardous materials in 46 U.S.C. 391a was amended by section 13(a) of the Act (94 Stat. 2303) to include the NLSs; however, this particular amendment to 46 U.S.C. 391a did not appear when that law was consolidated into Subtitle II of Title 46 U.S.C. (Pub. L. 98–89). Nevertheless, since the Coast Guard has the authority under HMTA to designate hazardous materials, the Coast Guard considers it desirable to designate NLSs as hazardous materials, thus placing them within the definition of "hazardous materials" under 46 U.S.C. 2101(14).

Included in the term "high viscosity NLS" are Category A cargoes having a visosity exceeding 25 mPa.s at the time they are unloaded. Although Annex II makes no reference to high viscosity Category A NLSs, this inclusion is necessary if the requirements for Category A NLSs are to be conistent with those applying to Categories B and C NLSs. The practical effect of this definition would be to require a hot water prewash for these high viscosity Category A cargoes.

The term "prewash" is used only to mean a tank washing operation that meets the procedure in § 153.1120. The details of the prewash procedure would vary with the cargo's viscosity and category. The prewash procedure, together with some controls on discharging, should reduce the amount of cargo residue remaining in the tank and cargo piping to the point that slops created in completing the tank washing operations, after the prewash, can be

discharged to the sea and still comply with MARPOL 73/78.

Section 153.3 Appeals. This section proposes procedures for appealing decisions by Coast Guard officers. These procedures presently are not in Part 153.

Section 153.5 Conditions for receiving certificates and authorizations. This section would be removed. Its substantive requirements would be distributed to other sections.

Section 153.7 Ships built before December 27, 1977 and non-self-propelled ships built before July 1, 1983: application. This section would be rewritten to delete material that is out of date and clarify or simplify the remaining language. Existing paragraphs (a) and (b) would be dropped since paragraph (a) defines terms used only in paragraph (b) while paragraph (b) would no longer serve any purpose. Paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) would be redesignated paragraphs (a), (b), (c), and (d), respectively, and would be revised to simplify the text. Because the term "ship" includes a barge, the relief from certain requirements granted older ships in these first 4 paragraphs would also be available to barges.

The Coast Guard proposes a new paragraph (e) to allow oceangoing barges built under the rules in Part 151 to continue to be issued Certificates of Inspection (COIs) under the design requirements in Part 151, rather than those in Part 153, on the condition that the NLSs required to be in type II hulls under Annex II are carried only in double-skin tanks on these older barges and that the barges meet those Part 153 requirements that, among other things, would reduce discharges of NLSs (both conditions are listed in the proposed language).

Paragraph (e) must be carefully compared with the more stringent standards proposed in § 153.12 under which the Coast Guard would issue a barge an IMO Chemical Code Certificate of Fitness (COF). The COF would be required if the barge visited a foreign port while carrying an NLS cargo or NLS residue. The COI would be sufficient if the barge traded only between United States ports when NLS cagro or cargo residue was on board.

Section 153.10 Procedures for requesting alternatives and waivers; termination of waivers. This section would be retitled and reworded to add a procedure describing how to request the waivers allowed by some of the sections and to list the conditions under which a waiver would be terminated.

Section 153.12 IMO Certificates and NLS Certificates for United States Flag Ships. This existing section would be revised to explain in more detail what a ship must meet before the Coast Guard issues a COF. The COF would be required when a ship carries an NLS or NLS residue while in foreign waters.

Ships build after December 27, 1977 under Part 153 which are modified to meet the Annex II requirements would also meet the IMO Bulk Chemical Code and would be eligible to receive a COF. Self-propelled ships built after November 2, 1973 but before December 27, 1977 were "grandfathered" under Part 153 could not be "grandfathered" under the IMO Bulk Chemical Code because it has an effective date of November 2, 1973. Before the Coast Guard would give the ship a COF, the Coast Guard would ascertain that the ship met the IMO Bulk Chemical Code requirements applying to ships of the same age.

The Coast Guard would issue COFs to non-self-propelled ships if they met the requirements for self-propelled ships except those for personnel safety equipment, and fire protection. It is not extirely clear from the Annex and the Bulk Chemical Code what requirements an administration should apply to non-self-propelled ships before issuing a COF. The Coast Guard would not impose the following requirements on non-self-propelled ships for the reasons shown:

Sections	Reasons
153.214	Personnel protection for tank entry. Usually, people do not enter tanks on non-self-propelled ships except in shipyards.
153.215	Safety equipment lockers. Same as for § 153.214.
153.460	Fire-protection equipment. Unmanned, non-self-propelled ships generally do not have power sources for the fire protection equipment. Fire protection equipment is principally for protection of the ship's crew.

The Coast Guard has chosen the proposed approach eliminate those requirements in the Bulk Chemical Code the seem inappropriate for non-self-propelled ships. If these are adopted in the final rule, the Coast Guard will inform IMO that it has required barges to meet all requirements in the Chemical Code except those listed.

Section 153.30. Special area endorsement. The term "special area" is defined in the "definitions" section and is a region of the ocean that has a limited ability to absorb ship discharges before suffering harm. If a ship is to operate in a special area, it must have an endorsement on the COI and the COF allowing it to do so. There are no special areas within or near the United States, so this would be of interest only to operators of United States ships trading in the small number of foreign ports located on waters that are within designated special areas. Since there appear to be no such United States ships, it is proposed to incorporate by reference Annex II of MARPOL 73/78 and the Standards of Procedures and Arrangements. The effect of this proposal for ships in special areas is to cause each category of NLS to be handled as though it were in a category of more polluting materials; for example, Category C cargo would handled as though it were a Category B.

Section 153.40. Designation of hazardous materials. The Secretary of Transportation is required to designate the materials that are "hazardous materials" under 49 U.S.C. 1803. In 49 CFR 1.46(t), the Secretary delegated to the Coast Guard the responsibility of designating bulk liquid hazardous materials moved by water. In § 153.40 the Coast Guard would carry out its responsibility. It should be noted that the hazardous materials that are NLSs have an entry in the "Pollution Category" of Table 1.

Section 153.470. System for discharge of NLS residue to the sea: Categories A, B, C, and D. The proposal would require and underwater discharge outlet for ships discharging NLS residue under § 153.1126. The Annex II formula for the diameter of the discharge outlet and the modification of the formula to account for discharges that are not parallel to the ship's hull would be combined. A period in which to install the underwater discharge outlet is built into the operating requirements of § 153.1128(D).

Sections 153.480 through 153.483. The criteria for efficient stripping in these sections are 0.05 m^3 greater those in Annex II. These larger values would accomodate the measurement error allowed in the efficient stripping test procedures of Annex II.

Section 153.481. Stripping quantities and interim alternatives for Category B Tanks on ships built before July 1, 1986: Category B. This section proposes to combine several parts of Annex II and the Standards for Procedures and Arrangements. Because Annex II requires that the NLS residue discharge rate be kept below a maximum value related to ship's speed, NLS concentration in the discharge, and other factors, the Coast Guard would include in proposed paragraph (b)(4)(i) a standard requiring that the flow rate controls yield a smooth variation of the discharge flow rate around the maximum flow rate set by the proposed rule when manual control of cargo discharge rate is necessary.

Section 153.900 Certificates and authorization to carry a bulk liquid

hazardous material. This section would be revised to clarify some of the existing requirements and to add requirements implementing Annex II.

Section 153.900 frequently refers to 33 CFR Part 151. In addition to the hazardous material cargoes listed in Table 1 of Part 153, the Coast Guard is proposing in a separate NPRM elsewhere in this edition of the **Federal Register** to add to 33 CFR Part 151 a Table 1 listing certain Category D NLS cargoes and a Table 2 listing "oil-like" NLS cargoes, any of which would be allowed to be carried under that part if the ship met certain conditions. Any of the cargoes from either group could also be carried in tanks approved for the appropriate category of cargo on ships operating under 46 CFR Part 153.

Proposed § 153.900(a)(4) implements, among other things, the Annex II requirement that chemical tankers trading in foreign ports have Certificates of Fitness. Proposed § 153.900(c) would prohibit carrying any bulk liquid cargo that did not appear in one of the tables listed unless the carriage was under the proposed interim authorization. This prohibition is in Annex II.

Section 153.901 Documents: posting, availability, and alteration and *section 153.902 Expiration and invalidation of the Certificate of Compliance.* These sections would contain some revised administrative requirements.

Section 153.903 Operating a United States ship in special areas: Categories A, B, and C. This section would provide for the special area operating requirements.

Section 153.906 Replacing equipment. This new section would ensure that replacements for failed equipment perform as well as the equipment evaluated by the Coast Guard.

Section 153.909 Completing the Cargo Record Book and record retention: Categories A, B, C, and D. The Coast Guard is considering requiring that U.S. ships have a Cargo Record Book published by the Coast Guard, which would meet the standards for Cargo Record Books required by Annex II of MARPOL 73/78. Having a uniform book would enable Coast Guard personnel to ensure the Cargo Record Book entries are properly maintained. As is the case with the Annex I Cargo Record Book, ownership of the Cargo Record Book would remain with the United States Government. A draft of the Cargo Record Book the Coast Guard proposes to require is published as an Appendix to this document; the public is invited to comment on the draft. The Coast Guard would require that foreign ships have a Cargo Record Book meeting the standards for Cargo Record Books in Annex II of MARPOL 73/78.

Sections 153.1100 through 153.1132. These sections would contain the operating requirements for handing NLS residues. Note that a prewash might be required by more than one section, though only one prewash would be necessary. Note also that § 153.1128(d) allows existing ships a period in which to install an underwater discharge outlet.

Additionally, the Coast Guard is proposing requirements for Surveyors under Annex II. These Surveyors would oversee certain prewash operations and other Annex II requirements. A person needing a Surveyor would contact the Coast Guard and request an inspector or indicate which acceptable third party would be used.

The Coast Guard is proposing that the Surveyor's functions could be performed with oversight by an independent third party organization that is experienced in ship cargo handling arrangements and procedures and knowledgeable in the requirements of Annex II and these regulations. These organizations could be classification societies, an organization such as the Marine Chemists Association, the National Cargo Bureau, or the International Cargo Gear Bureau. The procedures for applying for acceptance as a third party Surveyor and the qualification required are patterned on those that the Coast Guard has been using to qualify independent laboratories under 46 CFR Part 159. The Coast Guard invites comments on this concept, particularly from organizations that are interested in being accepted as Surveyors. The Coast Guard anticipates that Surveyors will be needed for about 200 transfers per year at U.S. ports.

Section 153.1130 Failure of discharge recording equipment: Category B. The Coast Guard would add a time limit of 24 hours to the Annex II requirement to report failure and repair of discharge recording equipment.

Subpart D—Test and Calculation Procedures for Determining Stripping Quantity, Clingage NLS Residue, and Total NLS Residue. The calculation of clingage NLS residue necessary for ships that do not meet the stripping standards for new ships can be tedious if the tank has internal framing. The Coast Guard has tables that give areas of many standard structural members; these could be requested from the Coast Guard by telephone. The clingage would be allowed to be estimated using these standardized areas.

Part 172—Special Rules Pertaining to Bulk Cargoes. The changes to Part 172 would clarify existing requirements by providing exceptions to them in accordance with the proposed changes to Part 153.

Table 1 would be revised to accommodate Annex II.

The cross-reference table below shows the specific sources in MARPOL 73/78 Annex II and the Standards for Procedures and Arrangements for most of the proposed requirements.

Proposed new or revised section	Source in annex II or the standards for procedures and arrangements
Part 151	
§ 151.01-1 Applicability	NR.
§ 151.03-30 Hazardous material	NR.
§ 151.03-36 Liquid	NR.
§ 151.12-5 Equipment for Category D NLS.	See sources for sections referenced.
§ 151.12-10 Operation of ocean-going non-self-propelled ships carrying Category D NLS.	See sources for sections referenced.
Part 153	
§ 153.0 Incorporation by reference.	NR
§ 153.1 Applicability	Annex: 2(1), 3(4).
§ 153.2 Definitions and acronyms.	Annex: 1(5), 3(4).
§ 153.3 Appeals	NR.
§ 153.7 Ships built before December 27, 1977 and non-self-propelled ships built before July 1, 1983: application.	Annex: 13(3).
§ 153.8 Procedures for requesting an endorsed Certificate of Inspection or IOPP Certificate.	NR.
§ 153.10 Procedures for requesting alternatives and waivers; termination of waivers.	Annex: 2(5), 2(6); standards: 1.4.
§ 153.12 IMO Certificates for United States Flag Ships.	Annex: 13(3).
§ 153.15 Conditions under which the Coast Guard issues a Certificate of Inspection or Certificate of Compliance.	NR.
§ 153.30 Special area endorsement.	Annex: 5A7, 8, 9, 10, 11, 12.
§ 153.40 Determination of materials that are hazardous.	NR.
§ 153.214 Personnel emergency and safety equipment.	NR.
§ 153.215 Safety equipment lockers.	NR.
§ 153.231 Type II system	NR.
§ 153.234 Fore and aft location	NR.
§ 153.440 Cargo temperature sensors.	NR.
§ 153.460 Fire protection systems.	NR.
§ 153.469 Application of 153.470 through 153.488.	NR.
§ 153.470 System for discharge of NLS residue to the sea: Categories A, B, C, and D.	Annex: 5(2)(B), 5(3)(d).
(a) Minimum diameter of an NLS residue discharge outlet.	Standards: 3.5.1, 3.5.2, 8.6.1.
(b) Location of an NLS residue discharge outlet.	Standards: 3.4.1, 8.5, 8.5.2.
(c) Location of dual NLS residue discharge outlets.	
§ 153.480 Stripping quantity for Category B and C NLS tanks on ships built after June 30, 1986: Categories B and C.	Annex: 5A(1), (3).
§ 153.481 Stripping quantities and interim standards for Category B NLS tanks on ships built before July 1, 1986: Category B.	Annex: 5(A)(2); standards: 10.6.2, 8.4, 8.4.1, 8.7.1, 8.7.2.
§ 153.482 Stripping quantities and standards for Category C NLS tanks on ships built before July 1, 1986: Category C.	Standards: 8.3.
(a)	Annex: 5A(4)(a), (b).
(b)	

Proposed new or revised section	Source in annex II or the standards for procedures and arrangements
§ 153.483 Alternatives prewash for Category B and C NLS tanks on ships built before July 1, 1986: Category B and C.	Annex: 5A6(a).
§ 153.484 Prewash equipment	Standards: Appendix B.
§ 153.486 Design and equipment for removing NLS residue by ventilation: Categories A, B, C, and D.	Standards: 8.9, 3.7.1, 9.3.3, appendix C.
§ 153.488 Design and equipment for tanks carrying high melting point NLSs: Category B.	Standards: 3.2.1, 8.2.1.
§ 153.490 Cargo Record Book and Approved Procedures and Arrangements Manual: Categories A, B, C, and D..	Annex.
(a)	Annex: 9(1); standards: 1.5.1.1, ch 2 4.3.2, 4.3.3, appendix D.
§ 153.491 Waiving of stripping equipment.	Annex: 5 A(7).
§ 153.900 Certificates and authorization to carry a bulk liquid hazardous material.	Annex: 2(3), 13.
§ 153.901 Documents: posting, availability, and alteration.	NR.
§ 153.902 Expiration and invalidation of the Certificate of Compliance.	NR.
§ 153.903 Operating a United States ship in special areas: Categories A, B, and C.	Annex: 5(6), 5A7, 8, 9, 10, 11, 12.
§ 153.906 Reporting equipment failures and replacing equipment.	NR.
§ 153.908 Cargo viscosity and melting point information; measuring cargo temperature during discharge: Categories A, B, and C.	NR.
§ 153.909 Completing the Cargo Record Book and record retention: Categories A, B, C, and D.	Annex: 9(2), 9(6).
§ 153.1100 Responsibility of the person in charge.	Annex: 8(1)(b).
§ 153.1101 Procedures for getting a Surveyor; approval of Surveyors.	Annex: 8(1)(a).
§ 153.1102 Handling and disposal of NLS residue: Categories A, B, C, and D.	Annex: 5(5), 8(8); standards: 4.3.1, 5.1, 5.6, 6.1, 6.6, 7.3, 9.3, 10.7.
§ 153.1104 Draining of cargo hose: Categories A, B, C, and D.	Annex: 7(3).
§ 153.1106 Cleaning agents	Standards: 1.8.1.
§ 153.1108 Heated prewash for solidifying NLS and high viscosity NLS: Categories A, B, and C.	Annex: 8(5)(a)(i); standards: 5.3.1, 6.3.1, 10.3.1.
§ 153.1112 Prewash for tanks containing Category A NLS residue.	Annex: 5(1), 8(2)(a).
§ 153.1114 Conditions under which a prewash may be omitted: Categories A, B, and C.	
(a)	Annex: 8(2)(b), 8(5)(b).
§ 153.1116 Prewash for tanks unloaded without following the approved Procedures and Arrangements Manual: Category B and C.	Annex: 8(5)(a)(ii); standards: 5.2.1, 6.2.1, 10.1.4, 10.2.1.
§ 153.1118 Prewash of Category B and C cargo tanks not meeting stripping standards: Category B and C.	Annex: 5A(6)(b)(i); standards: 10.1.2, 10.3.2.1.
§ 153.1119 When to prewash and discharge NLS residues from a prewash: Categories A, B, and C.	Standards: 4.2.2, 9.2.2, 10.3.2.2.
(b)	Standards: 5.5.3.
(c)	Annex: 8(1)(c), 8(1)(a), 8(2)(b)(ii), 8(5)(b)(ii).
§ 153.1120 Procedures for tank prewash: Categories A, B, and C.	Annex: 8(3), standards: 4.2, 9.2.1.
(b)	Annex: 8(4), standards: 4.2.1.
§ 153.1122 Discharges of NLS residue from tank washing other than a prewash: Categories A, B, and C.	Standards: 4.3.4.
§ 153.1124 Discharge of Category D NLS residue.	Annex: 8(8); standards: 7.2.
§ 153.1126 Discharge of NLS residue from a slop tank: Categories A, B, C, and D.	Standards: 5.5.2.
(b)	Standards: 10.5.5, 10.6.4.
For homogeneous (miscible) tank contents.	Standards: 10.5.2, 10.5.3.
For inhomogeneous (immiscible) tank contents.	Standards: 10.6.2.
§ 153.1128 Conditions for discharge of NLS residue from a cargo tank to the sea: Categories A, B, C, and D.	Annex: 8(8); standards: 4.2.3, 5.7, 5.3.1.3, 5.3.2, 6.3.1, 6.3.1.3, 6.7, 7.2, 9.2.3, 10.3.2.3, 10.8.
(a)	Annex: 5(3)(e), 5(4)(c).
(b)	Annex: 5(1), 5(2), 5(2)(d), 5(2)(e), 5(3), 5(4)(a).
(c)	Standards: 5.7.2.
(e)	Annex: 2(4).
§ 153.1130 Failure of slops discharge recording equipment: Category B.	
(a)	Annex: 10(3)(c); standards: 8.7.3.
§ 153.1132 Reporting spills and non-complying discharges: Category A, B, C, and D.	
SubpartD—Test and Calculation Procedures for Determining Stripping Quantity, Clingage NLS Residue, and Total NLS Residue.	Standards: 5A(5).
§ 153.1600 Equipment required for conducting the stripping quantity test.	Standards: 3.1.3.
§ 153.1602 Test procedure for determining the stripping quantity.	
(b)	Standards: 3.2.1.
(2)	Standards: 3.1.1, 3.1.2.
(3)	Standards: 3.1.1, 3.1.2.
(4)	Standards: 3.2.2.
(5)	Standards: 3.2.3.
(6)	Standards: 3.2.4.
(7)	Standards: 3.2.4.
(8)	Standards: 3.2.4.
(9)	Standards: 3.2.4, 3.2.6.
(c)	
(1)	Standards: 3.2.4.
§ 153.1604 Determining the stripping quantity from the test results.	
(a)	Standards: 3.2.5.
(b)	Standards: 3.2.6.
§ 153.1608 Calculation of total NLS residue and clingage NLS residue.	
(b)	Standards: 4.1, Appendix A.

NR means no reference, for example, where a proposed requirement elaborates a requirement in the Annex or arises from something other than MARPOL 73/78.

Regulatory Evaluation

These proposed regulations are not considered to be major under Executive Order 12291 nor significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft evaluation has been prepared and placed in the public docket and may be inspected or copied as detailed in **ADDRESSES** above.

The benefit of the proposed regulations would be to reduce the quantities of noxious liquid substances discharged into the marine environment, both from ship operations and ship accidents. The particular approach chosen in Annex II of MARPOL 73/78 achieves these benefits with only minor increases in ship design costs, operating costs, personnel costs, and operating complexity. The draft evaluation projects an estimated cost for the proposed rule of approximately $4,600,000 in design and equipment cost with a recurring annual cost of approximately $1,900,000 including depreciation of the design and equipment costs, maintenance costs, slops disposal costs, ship delay costs, administrative costs, and effects of improved cargo recovery. The Coast Guard has made a preliminary determination that four U.S. ocean-going barges presently trading NLSs in foreign parts would not be able to meet the damage stability requirements proposed for them. No estimate of the additional cost for these four ships is available at this time. The Coast Guard welcomes any comments that would enable an estimate of this additional cost.

Regulatory Flexibility Analysis

The Coast Guard certifies that this proposal would not have a significant economic impact on a substantial number of small entities if put into effect. The size and sophistication of the ships affected by this proposal are such that their cost ranges from several million to $110 million. The daily operating costs can range from about $5,000 for a barge to $25,000 for a manned ship. The Coast Guard concludes that no company having capital and operating costs of this size is a "small entity."

Environmental Analysis

The environmental analysis shows the proposed rule would have a beneficial effect on the environment by reducing the discharge of cargo tank washings to the sea. The amount of Category A cargo that would no longer be discharged to the sea by U.S. flag ships under the proposed rule is estimated to be 16,000 liters yearly. The amount of Category B and C cargo that would no longer discharged to the sea by U.S. flag ships because of better cargo recovery from efficient stripping systems is estimated to be 3,000,000 liters per year. The amount of Category B and C cargo that would no longer be discharged to the sea by U.S. flag ships because of prewash requirements is estimated to be 85,000 liters per year.

Because most trade in noxious liquid substances moves in foreign flag tankers, the greatest benefit to the United States will probably come from the implementation of Annex II of MARPOL 73/78 by other nations whose

ships either trade in the U.S. or pass near U.S. waters in their trade with neighboring countries. The implementation of Annex II of MARPOL 73/78 by the United States, though having a smaller impact than implementation by other nations, is crucial in gaining worldwide acceptance of the convention. Nevertheless, because the amount of cargo discharged by U.S. flag ships through tank washing is small relative to that discharged by ships of other nations and the ability of the oceans to absorb such discharges, the Coast Guard has determined that the regulation, if adopted, would not have a significant impact on the environment.

Paperwork Reduction Act

This rule contains information collection requirements in §§ 153.3, 153.8, 153.10, 153.12, 153.483, 153.490, 153.491, 153.900, 153.901, 153.1119, 153.1120, and 153.1132. It contains recordkeeping requirements in §§ 153.490, 153.900, 153.901, 153.909, 153.1114, 153.1116, 153.1120, 153.1130. These will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC. 20503, Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES"**.

The requirements presently in Part 153 are approved under RCS/OMB number 2115–0089.

List of Subjects

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 151

Hazardous materials transportation, Marine safety, Flammable material, Tank Vessels, Barges.

46 CFR Part 153

Hazardous materials transportation, Marine safety, Tank vessels, Barges.

46 CFR Part 172

Marine safety, Subdivision, Stability, Vessels, Barges, Hazardous materials transportation.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 151—[AMENDED]

1. The authority citation for Part 151 is revised to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3703; 49 CFR 1.46(n)(4) and (hh).

2. By revising § 151.01–1 to read as follows:

§ 151.01–1 Applicability.

This part applies to the following:

(a) All United States non-self-propelled ships and those foreign non-self-propelled ships operating in United States waters that carry a cargo that is—

(1) Listed in Table 151.05;

(2) A Category D NLS listed in Table 1 of this part or not an NLS; and

(3) Not being carried in a marine portable tank under Part 98 of this chapter.

(b) All United States ships that are self-propelled and not oceangoing as defined in § 153.2 of this chapter that carry a Category A, B, or C NLS cargo listed in Table 151.05, unless the cargo is being carried in a marine portable tank under Part 98 of this chapter.

3. By adding a new § 151.03–30 to read as follows:

§ 151.03–30 Hazardous material.

In this part "hazardous material" means a liquid material or substance that is—

(a) Flammable or combustible;

(b) Designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(c) Designated a hazardous material under section 104 of the Hazardous Material Transportation Act (HMTA) (49 U.S.C. 1803).

Note.—The Environmental Protection Agency designates hazardous substances in 40 CFR Table 116.4A. The Coast Guard designates hazardous materials that are transported as bulk liquids by water in § 153.40.

4. By adding a new § 151.03–36 to read as follows:

§ 151.03–36 Liquid.

In this part "liquid" includes liquefied and compressed gases.

§ 151.01–10 [Removed]

5. By removing § 151.01–10(f).

6. By removing Table 151.01–10(f).

7. By amending Table 151.05 by adding the following entries in proper alphabetical order:

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gaging device	Piping class	Control	Cargo tanks	Cargo handling space					
Acrylic acid (inhibited)	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent F	Yes	151.55–1(g)	I–D	NA	G
Ammonium bisulfite solution (50% or less).	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G–1	NR	Vent N	No	151.55–1 (b), (h)	NA	NA	G
Amyl acetate (iso-, n-, sec-).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent N	Yes		I–D	NA	G
Benzyl alcohol	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G–1	NR	Vent N	Yes	No	NA	NA	G
Benzyl chloride	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	PV	Closed	II	G–1	NR	Vent N	Yes		I–D	NA	G
Butyl acetate (iso-, n-, sec-).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent N	Yes		I–D	NA	G
Butyl benzyl phthalate	Atmos.	Amb.	II	1ii; 2i	Integral Gravity	Open	Open	II	G–1	NR	Vent N	Yes		I–D	NA	G
Butyric acid	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent N	Yes		I–D	NA	G
Coal tar naphtha solvent.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent N	Yes		NA	NA	G
#Creosote (wood)	Atmos.	Amb.	II	1i; 2i	Integral Gravity	Open	Open	II	G–1	NR	Vent N	Yes		NA	NA	G
#Creosote (coal tar)	Atmos.	Amb.	III	1i; 2i	Integral Gravity	Open	Open	II	G–1	NR	Vent N	Yes		I–D	NA	G
Cumene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent N	Yes		I–D	NA	G
Cyclohexane	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent N	Yes		I–D	NA	G
Cyclohexanol	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G–1	NR	Vent N	Yes	No	I–D	NA	G
Cyclohexanone	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent F	Yes	151.55–1(f)	I–D	NA	G
Cyclohexylamine	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent F	Yes	151.55–1 (c), (j)	I–D	NA	G

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (section)	Electrical hazard class-group	Temp. control installation	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gaging device	Piping class	Control	Cargo tanks	Cargo handling space					
p-Cymene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Decyl alcohol (iso-, n-).	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
o-Dibutyl phthalate	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		I-D	NA	G
Dichlorobenzene	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	151.55-1(f)	I-D	NA	G
1,1-Dichloroethane	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Dichlorophenoxyacetic acid, diethanolamine salt solution.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		NA	NA	G
Dichlorophenoxyacetic acid, dimethylamine salt solution.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		NA	NA	G
Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		NA	NA	G
Dichloropropene, Dichloropropane mixtures.	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Diethylbenzene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Diethyl phthalate	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Diglycidyl ester of Bisphenol A.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Diisobutylene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Diisobutyl phthalate	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Diisopropyl benzene (all isomers).	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Dimethylethanolamine	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	151.55-1(e)	I-C	NA	G
Dimethyl phthalate	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		I-D	NA	G
Dipentene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Diphenyl	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D [4]	Yes	G
Diphenyl diphenyl oxide.	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D [4]	NA	G
Diphenyl ether	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		I-D	NA	G
Diphenyl methane diisocyanate.	Atmos.	Amb.	II	1ii; 2i	Integral Gravity	PV	Closed	I	G-1	Inert	Vent F	Yes	151.50-5	NA	Yes	G
Dodecanol	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		I-D	NA	G
Dodecene (all isomers).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Dodecylbenzene	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Dodecyl phenol	Atmos.	Amb.	I	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		I-D	NA	G
2-Ethoxyethyl acetate	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-C	NA	G
Ethyl benzene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Ethylene chlorohydrin	Atmos.	Amb.	I	1ii; 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	151.50-5	I-D	NA	G
Ethylene glycol diacetate.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D [4]	NA	G
Ethylene glycol ethyl ether acetate.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-C	NA	G
Ethyl methacrylate (inhibited).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Ethyl toluene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Furfuryl alcohol	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-C	NA	G
Glutaraldehyde solution (50% or less).	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	No	NA	NA	G
Heptanol (all isomers)	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Heptene (mixed isomers).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Hexamethyleneimine	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	151.55-1 (c), (f)	I-C	NA	G
1-Hexene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Hexyl acetate	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Mesityl oxide	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Methylamine (anhydrous).	Press.	Amb.	I	1NA; 2ii	Ind. Press	SR	Closed	II	P-2	NR	Vent F	Yes	151.50-30	I-D	NA	8
Methylamine solution (52% or less).	Atmos.	Amb.	II	1NA; 2ii	Ind. Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	151.55-1(b)	I-D	NA	G
Methylamyl acetate	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Methylamyl alcohol	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Methylamyl ketone	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Methyl heptyl ketone	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR		Yes		I-D [4]	NA	G
Nonene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Nonyl alcohol	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Nonyl phenol	Atmos.	Amb.	II	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Octanol (all isomers)	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Octene (all isomers)	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Octyl aldehyde	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR		Yes		I-C [4]	NA	G
Pentachloroethane	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
n-Pentane	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	P-1	NR	Vent ?	Yes	No	I-D	NA	G
n-Pentene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	P-1	NR	Vent ?	Yes	No	I-D	NA	G
3-Pentenenitrile	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Pinene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Propanolamine (iso-, n-).	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent F	Yes	151.55-1(c)	NA	NA	G
iso-Propyl ether	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (section)	Electrical hazard class-group	Temp. control installation	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gaging device	Piping class	Control	Cargo tanks	Cargo handling space					
Pseudocumene see 1,2,4-Trimethylbenzene.																
Sodium dichromate solution (70% or less).	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	Open	Closed	I	G-1	NR	Vent N	No	151.50-5(d), 151.55-1(c).	NA	NA	G
Sodium hypochlorite solution (15% or less).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	151.55-1 (b), (c), (d), (e), (f), (g).	NA	NA	G
1,1,2,2-Tetrachloroethane.	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
Tetrahydrofuran (stabilized).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-C	NA	G
Tetrahydronaphthalene.	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Toluene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Tributyl phosphate	Atmos.	Amb.	III	1ii; 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
1,2,4-Trichlorobenzene.	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
1,1,2-Trichloro-1,2,2-trifluoroethane.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		NA	NA	G
Tricresyl phosphate (less than 1% ortho isomer).	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D [4]	NA	G
Tridecyl benzene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No		I-D [4]	NA	G
Triethylbenzene	Atmos.	Amb.	II	1ii; 2i	Integral Gravity	Open	Open	II	G-2	NR	Vent N	Yes	No	I-D	NA	G
1,2,4-Trimethyl benzene.	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Trixylenyl phosphate	Atmos.	Amb.	I	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Turpentine	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G
Turpentine substitute see White spirit.																
1-Undecene	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		I-D	NA	G
Undecyl alcohol	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes		I-D	NA	G
Valeraldehyde (iso-, n-).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	Inert	Vent F	Yes	No	I-C	NA	G
Vinyl toluene (inhibited).	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	151.55-1(j)	I-D	NA	G
White spirit	Atmos.	Amb.	II	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		NA	NA	G
Xylenes	Atmos.	Amb.	III	1ii; 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent N	Yes		I-D	NA	G

7a. By adding a new Subpart 1511.2 to read as follows:

Subpart 151.12—Equipment and Operating Requirements for Pollution Control

Sec.

151.12-5 Equipment for Category D NLS.

151.12-10 Operation of oceangoing non-self-propelled ships Carrying Category D NLS.

Subpart 151.12—Equipment and Operating Requirements for Pollution Control

§ 151.12 Equipment for Category D NLS.

Each oceangoing non-self-propelled ship that carries any of the following Category D NLSs must meet the requirements applying to ships that carry Category D NLSs in §§ 153.470, 153.486, and 153.490 of this chapter:

(a) Acrylic acid.
(b) Adiponitrile.
(c) Aminoethylethanolamine.
(d) n-Butyl acrylate.
(e) Butyl netgacrylate
(f) Caustic soda solution.
(g) Chlorohydrins, crude.
(h) Cyclohexanone.
(i) Diethylenetriamine.
(j) Dimethylethanolamine.
(k) Dimethylformamide.
(l) 1,4-Dioxane.
(m) Ethlcyclohexylamine.
(n) 2-Ethylhexyl acrylate.
(o) Ethylene cyanohydrin.
(p) Ethyl methacrylate.
(q) Formic acid.
(r) Glutaraldehyde solution.
(s) Hydrochloric acid.
(t) Mesityl oxide.
(u) Methyl methacrylate.
(v) (mono) Ethanolamine.
(w) Morpholine.
(x) 1- or 2-Nitropropane.
(y) Phosphoric acid.
(z) Polymethylene polyphenyl isocyanate.
(aa) Propionic acid.
(bb) Propylene oxide.
(cc) iso-Propyl ether.
(dd) Tetraethylene pentamine.
(ee) Tetrahydrofuran.
(ff) Triethanolamine.
(gg) Triethylene testramine.
(hh)n-Valeraldehyde.

§ 151.12-10 Operation of oceangoing non-self-propelled ships Carrying Category D NLS.

(a) An oceangoing non-self-propelled ship may not carry in a cargo tank a Category D NLS cargo listed under § 151.12-5 unless the ship has an NLS Certificate endorsed under that section to allow the cargo tank to carry the NLS cargo.

(b) The person in charge of an oceangoing non-self-propelled ship that carries a Category D NLS listed under § 151012-5 shall ensure that the ship is operated as prescribed for the operation of oceangoing ships carrying Category D NLSs in §§ 153.901, 153.906, 153.909, 153.1100, 153.1104, 153.1106, 153.1124, 153.1126, and 153.1128 of this chapter.

PART 153—[AMENDED]

8. The authority citation for Part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46(n)(4) except § 153.40 which is issued under 49 U.S.C. 1804; 49 CFR 1.46(t). Additional authority under 33 U.S.C. 1903(b); 49 CFR 1.46(hh) for § 153.469 through § 153.491, § 153.1100 through § 153.1132, and § 153.1600 through § 153.1608.

9. By revising the title of Part 153 to read as follows:

PART 153—SHIPS CARRYING BULK LIQUID HAZARDOUS MATERIALS

10. In Part 153, by removing the words "Table I" (Roman numeral) wherever

they appear and inserting in their place the words "Table 1" (Arabic numeral).

11. by adding a new § 153.0 to read as follows:

§ 1530.0 Incorporation by reference.

(a) With the approval of the Director of the **Federal Register**, under 5 U.S.C. 552(a) certain materials are incorporated into this part by reference. The Office of the **Federal Register** publishes a table entitled "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table are found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file and may be examined at the Office of the **Federal Register**, Washington, DC 20408, and at the United States Coast Guard, Marine Technical and Hazardous Materials Division, Washington, DC 20593.

(b) The material approved for incorporation by reference in this part are the following:

(1) IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances,* Resolution MEPC 18(22), 1985 in effect on (insert effective date).

(2) IMO *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk* , Resolution MEPC 19(22), 1985 in effect on (insert effective date).

(3) IMO *Code for the Construction and Equipment of ships Carrying Dangerous Chemicals in Bulk* , Resolution MEPC 20(22), 1985 in effect on (insert effective date).

(c) The IMO documents incorporated by reference in this section are available from the following:

(i) IMO Secretariat, Publications Section, 4 Albert Embankment, London SE1 75R, United Kingdom, Telex 23588;

(ii) New York Nautical Instrument and Service Co., 140 West Broadway, New York, NY 10013;

(iii) Baker, Lyman & Company, 308 Magazine Street, New Orleans, LA 70130;

(iv) Labelmaster, 5724 N. Pulaski Road; Chicago, IL 60646;

(v) UNZ & Company, 170 Broadway, New York, NY 10038; and

(vi) Southwest Instrument Co., 235 West 7th Street, San Pedro, CA 90731.

12. By revising § 153.1 to read as follows:

§ 153.1 Applicability.

This part applies to the following:

(a) All United States self-propelled ships and those foreign self-propelled ships operating in United States waters that carry a cargo listed in Table 1 or allowed in a written permission under § 153.900(c), unless the cargo is being carried in a marine portable tank udner Part 98 of this chapter.

(b) All United States oceangoing non-self-propelled ships and those foreign non-self-propelled ships operating in United States waters that carry a Category A, B, or C NLS cargo listed in Table 1 or allowed in a written permission under § 153.900(c), unless the cargo is being carried udner 33 CFR Part 151 or in a marine protable tank under Part 98 of this chapter.

(c) All ships that carry a bulk liquid, liquefied gas, or compressed gas cargo that is none of the following:

(1) Listed in Table 1.

(2) Listed in Table 2.

(3) Carried under a written permission granted udner § 153.900(c).

(4) Carried under Parts 30–35, 98, 151, or 154 of this chapter.

(5) Carried as an NLS under 33 CFR Part 151.

13. In § 153.2, by revising the definitions of "IMO Certificate" and "tank-ship" and adding new definitions in proper alphabetical order to read as follows:

§ 153.2 Definition and acronyms.

"Adequate reception facility" means each facility certified as adequate under 33 CFR 158.160 and each facility under the jurisdiction of a government signatory to MARPOL 73/78 that has been found by its government to be an adequate reception facility under Regulation 7 of MARPOL 73/78.

* * * * *

"Annex II" means Annex II to MARPOL 73/78 and is the Annex to MARPOL 73/78 regulating the discharge of noxious liquid substances to the sea.

* * * * *

"Built" means that a ship's construction has reached any of the following stages:

(1) The keel is laid.

(2) The mass of the partially assembled ship is 50,000 kg.

3. The mass of the partially assembled ships is one per cent of the estimated mass of the completed ship.

"Cycle," Means that the tank washing machine is operated until the interior surface of an imaginary sphere having the tank washing machine at its center is covered twice by the spray pattern.

Note.—For a typical one or two nozzle tank washing machine that rotates in both the horizontal and vertical planes, a cycle would be at least one rotation in each plane of rotation.

* * * * *

Hazardous material" means a liquid material or substance that is—

(1) Flammable or combustible;

(2) Designated a hazardous substance under section 311(b) of the Fedeal Water Pollution Control Act (33 USC 1321); or

(3) Designated a hazardous material under section 104 of the Hazardous Material Transportation Act (HMTA) (49 USC 1803).

Notes.—The Environmental Protection Agency designates hazardous substances in 40 CFR Table 116.4A. The Coast Guard designates hazardous materials that are transported as bulk liquids by water in 9153.40.

"High viscosity NLS" includes Category A NLSs having a viscosity of at least 24 mPa.s at 20 °C and at least 25 mPa.s at the time they are unloaded, high viscosity Category B NLSs, and high viscosity Category C NLSs, but does not include solidifying NLSs.

"High viscosity Category B NLS" means any Category B NLS having a viscosity of at least mPa.s at 20 °C and at least 25 mPa.s at the time it is unloaded, but does not include solidifying NLSs.

"High viscosity Category C NLS" means any Category C NLS having a viscosity of at least 60 mPa.s at 20°C and at least 60 mPa.s at the time it is unloaded, but does not include solidifying NLSs.

* * * * *

"IMO Bulk Chemical Code" includes the IMO *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk,* Resolution MEPC 19(22), 1985 and the IMO *Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk,* Resolution MEPC 20(22), 1985.

"IMO Certrificate" includes a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under the IMO *Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk,* Resolution MEPC 20(22), 1985 and an International Certificate of Fitness the Carriage of Dangerous Chemicals in Bulk issued under the IMO *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk,* Resolution MEPC 19(22), 1985.

* * * * *

"IOPP Certificate" means an International Oil Pollution Prevention Certificate required under 33 CFR 151.19.

"Liquid" means substance having a vapor pressure of 172 kPa or less a 37.8°C.

"MARPOL 73/78" means the *International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.*

* * * * *

"Master" includes the person-in-charge of a non-self-propelled ship.

"Nearest land" has the same meaning as in 33 CFR 151.05(h).

"Noxious liquid substance" (NLS) means—

(1) Each substance listed in 33 CFR Part 151, Table 1 or 33 CFR Part 151, Table 2;

(2) Each substance having an "A," "B," "C," or "D," beside its name in the column headed "Pollution Category" in Table 1 (of this part); and

(3) Each substance that is identified as an NLS in a written permission issued under § 153.900(d).

"NLS Certificates" means an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued under Annex II of MARPOL 73/78.

* * * * *

"Oceangoing" ship has the same meaning as in 33 CFR 151.05(j).

* * * * *

"Prewash" means a tank washing operation that meet the procedure in § 153.1120.

* * * * *

"Residues and mixtures containing NLSs" (NLS residue) means—

(1) Any Category A, B, C, or D NLS cargo retained on the ship because it fails to meet consignee specifications;

(2) Any part of a Category A, B, C, or D NLS cargo remaining on the ship after NLS is discharged to the consignee, including but not limited to puddles on the tank botton and in sumps; clingage in the tanks, and substance remaining in the pipes; or

(3) Any material contaminated with a Category A, B, C, or D NLS cargo, including but not limited to bilge slops, ballast, hose drip pan contents, and tank wash water.

* * * * *

"Ship" means a vessel of any type whatsover, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not; and fixed or floating platforms.

"Slop tanks" include slop tanks and cargo tanks used as slop tanks.

"Solidifying NLS" means a Category A, B, or C NLS that has a melting point—

(1) Greater than 0 °C but less than 15°C and a temperature, measured under the procedure in § 153.908(d), that is less than 5 °C above its melting point at the time it is unloaded; or

(2) 15 °C or greater and has a temperature, measured under the procedure in § 153.908(d), that is less than 10 °C above its melting point at the time it is unloaded.

* * * * *

"Special area" means the Baltic Sea Area as defined in 33 CFR 151.13(a)(2) and the Black Sea Area as defined in 33 CFR 151.13(a)(3).

* * * * *

"Tankship" has the same meaning as "ship".

14. By adding § 153.3 to read as follows:

§ 153.3 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard official responsible for that action.

(b) Any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section by a Coast Guard official operating within a district may make a written appeal of that ruling, or an oral appeal as allowed under paragraph (d) of this section, to the Commander of the Coast Guard of that district. The appeal may contain supporting documentation and evidence that the appellant wishes to have considered. If requested to do so, the District Commander may stay the effect of the action being appealed while the ruling is reviewed. The District Commander issues a ruling after reviewing an appeal submitted under this paragraph.

(c) Any person not satisfied with a ruling made under the procedure contained in pargaraph (b) of this section, or any person not satisfied with a ruling made by an official in the Office of Marine Safety, Security, and Environmental Protection, may appeal that ruling in writing, or orally as allowed under paragraph (d) of this section, to the Chief, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Washington, DC 20593. The appeal may contain supporting documentation and evidence that the appellant wishes to have considered. If requested to do so, the Chief, Office of Marine Safety, Security and Environmental Protection, may stay the effect of the action being appealed while the ruling is reviewed. The Chief, Office of Marine Safety, Security and Environmental Protection, issues a ruling after reviewing an appeal submitted under this paragraph. Any decision made by the Chief, Office of Marine Safety, Security and Environmental Protection, under the procedures of this paragraph is final agency action.

(d) Any appeal under this section must be made within 30 days after notification of the ruling being appealed. If the delay in presenting a written appeal would have a significant adverse impact on the appellant, the appeal under paragraph (b) or (c) of this section may first be presented orally. If the appeal is first presented orally, the appellant must submit the appeal in writing within five days of the oral presentation to the Coast Guard official to whom the oral presentation was made. The written appeal must contain the reasons for the appeal and a summary of the oral presentation.

§ 153.5 [Removed]

15. By removing § 153.5.

16. By revising § 153.7 to read as follows:

§ 153.7 Ship built before December 27, 1977 and non-self-propelled ships built before July 1, 1983; application.

(a) The standards in §§ 153.231(b) and 153.234 and §§ 172.130 and 172.133 of this chapter do not apply to type II containment systems and a ship carrying these systems if—

(1) The ship was built before December 27, 1977;

(2) The ship has a loadline certificate;

(3) The cargo tanks of the type II containment systems include no part of the ship's hull plating; and

(4) The distance between each type II cargo tank bottom and the ship's hull is at least 76 cm when measured parallel to the vertical axis of the ship.

(b) Section 152.234 and the standard for engineroom flooding in § 172.133(d) of this chapter do not apply to a type II containment system and the ship that carries it if the ship was built before December 27, 1977.

(c) The standards in § 153.234 and in §§ 172.130 and 172.133 of this chapter do not apply to a type III containment system and the ship that carries it if the ship—

(1) Was built before December 27, 1977; and

(2) Has a loadline certificate.

(d) The standards in §§ 153.217, 153.219, and 153.254 do not apply to a ship built before December 27, 1977.

(e) Except for those listed in paragraph (e)(5) of this section, the design and equipment requirements in this part do not apply to a non-self-propelled ship that carries a cargo solely between United States ports if—

(1) The ship was built before July 1, 1983 under the standards in Part 151 of

this chapter to carry a hazardous material or NLS cargo listed in Table 1:

(2) The last Certificate of Inspection or Certificate of Compliance the Coast Guard issued the ship under Part 151 authorized the carriage of that cargo in the containment system or, for those cargoes that were listed in Table 30.25–1 of this chapter at the time the last Certificate of Inspection or Certificate of Compliance was issued, authorized the ship to carry the flammability grade of the cargo;

(3) The ship has the hull type shown for that cargo in Table 151.05 of Part 151 of this chapter;

(4) The ship's tanks include no part of the ship's hull plating if the Certificate of Inspection is to be endorsed to carry—

(i) Acetic anhydride;
(ii) Acetonitrile;
(iii) Isobutyl acrylate;
(iv) N-butyl acrylate;
(v) Chlorobenzene;
(vi) Chlorosulfonic acid;
(vii) Cresols;
(viii) Iso-decyl acrylate;
(ix) 1,1 dichloropropane;
(x) 1,2 dichloropropane;
(xi) 1,3 dichloropropane;
(xii) Diisobutylamine;
(xiii) Ethyl acrylate;
(xiv) Ethylene diamine;
(xv) Ethylene dichloride;
(xvi) Methyl acrylate;
(xvii) Methyl methacrylate;
(xviii) 2-methyl pyridine; or
(xix) Alpha-Methyl styrene;

(5) If the cargo is an NLS the ship meets the standards in—

(i) Section 153.216 and §§ 153.470 through 153.490 applying to the category of that cargo; and

(ii) Section 153.408 and § 153.409 when the "Special Requirements" column of Table 1 contains an entry for either of those sections beside the cargo name; and

(6) The ship continues to meet the design and equipment requirements in Part 151 of this chapter that applied when its last Certificate of Inspection or Certificate of Compliance under that part was issued.

17. By revising § 153.8 to read as follows:

§ 153.8 Procedures for requesting an endorsed Certificate of Inspection or IOPP Certificate.

(a) When applying for the endorsed Certificate of Inspection that § 153.900 requires for a ship to carry a cargo listed in Table 1, the applicant must proceed as follows:

(1) Send a letter to one of the Coast Guard offices listed in § 91.55–15 of this chapter that includes—

(i) A request for the endorsed Certificate of Inspection;

(ii) The name of the ship; and

(iii) A list of the cargoes from Table 1 the applicant wishes the endorsement to allow.

(2) Supply to the Coast Guard when requested—

(i) Hull type calculations;

(ii) The plans and information listed in §§ 54.01–18, 56.01–10, 91.55–5(a), (b), (d), (g), and (h), and 110.25–1 of this chapter;

(iii) A copy of the Procedures and Arrangements Manual required by § 153.490; and

(iv) Any other ship information, including plans, design calculations, test result, certificates, and manufacturer's data, that the Coast Guard needs to determine if the ship meets this part.

(b) The Coast Guard notifies the applicant in writing—

(1) Whether any further information is necessary to evaluate the request for the endorsed Certificate of Inspection; and

(2) Of the outcome of the request for the endorsed Certificate of Inspection.

(c) The Coast Guard returns the Procedures and Arrangements Manual stamped "Approved" or indicating what corrections are necessary.

Note: The procedures for requesting IOPP Certificate are found in 33 CFR 151.

18. By revising § 153.10 to read as follows:

§ 153.10 Procedures for requesting alternatives and waivers; termination of waviers.

(a) The Coast Guard considers allowing the use of an alternative in place of a requirement in this part if—

(1) The person wishing to use the alternative sends a written application to the Commandant (G–MTH) explaining—

(i) The requirement in this part that would not be met and the reason why;

(ii) The alternative the person proposes to be substituted; and

(iii) How the alternative would ensure a level of safety and pollution protection at least equal to that of the requirement for which the alternative would substitute;

(2) The alternative does not substitute an operational standard for a design or equipment standard; and

(3) The Commandant (G–MTH) determines that the alternative provides a level of protection for purposes of safety and pollution at least equal to the requirement in this part.

(b) The Coast Guard considers granting a waiver of a requirement for which this part allows a waiver if the person wishing the waiver sends a written application to the Commandant (G–MTH) that includes—

(1) A citation of the regulation that allows the waiver; and

(2) Any information and pledges that the regulation requires to be submitted with the application for the waiver.

(c) The Commandant notifies the applicant in writing—

(1) Whether any further information is necessary to evaluate the request for an alternative or waiver; and

(2) Of the outcome of the request for an alternative or waiver.

(d) A waiver issued under this part terminates if any—

(1) Information required to be supplied with the application for the waiver changes;

(2) Pledges required to be supplied with the application for the waiver are repudiated;

(3) Restrictions applying to operations under the waiver are violated; or

(4) Requirements in the section of this part authorizing the waiver are violated.

19. By revising § 153.12 to read as follows:

§ 153.12 IMO Certificates for United States Flag Ships.

The Officer in Charge, Marine Inspection issues a United States ship an IMO Certificate endorsed to allow the carriage of a hazardous material or NLS cargo in Table 1 if the following requirements are met:

(a) The ship's owner must make a request to the OCMI for the IMO Certificate.

(b) The ship must meet this part.

(c) Self-propelled ships built after November 1, 1973 but before December 28, 1977 must meet requirements in this part that apply to a self-propelled ship built on December 28, 1977.

(d) Non-self-propelled ships built after November 1, 1973 but before July 1, 1983 must meet the requirements in this part applying to non-self-propelled ships built on July 1, 1983.

20. By moving § 153.15 and 153.16 from Subpart B to Subpart A and revising § 153.15 to read as follows:

§ 153.15 Conditions under which the Coast Guard issues a Certificate of Inspection or Certificate of Compliance.

(a) The Coast Guard issues the endorsed Certificate of Inspection required under § 153.90 for a United States ship to carry a hazardous material or NLS listed in Table 1 if—

(1) The person wishing the Certificate of Inspection applies following the procedures under § 153.8; and

(2) The ship meets the design and equipment requirements of this part and—

(i) Subchapter D of this Chapter if the hazardous material or NLS is flammable or combustible; or

(ii) Either Subchapter D or I of this Chapter, at the option of the ship owner, if the hazardous material or NLS is non-flammable or non-combustible.

(b) The Coast Guard issues the endorsed Certificate of Compliance required under § 153.900 for a foreign ship to carry a hazardous material or NLS listed in Table 1 if—

(1) The person wishing the Certificate of Compliance follows the procedures under § 153.9;

(2) The ship has an IMO Certificate endorsed with the name of the hazardous material or NLS if the ship's administration issues IMO Certificates;

(3) The ship meets the requirements of this part applying to United States ships and § 30.01–5(e) of this chapter if the ship's administration does not issue IMO Certificates; and

(4) The ship meets any additional design and equipment requirements specified by the Commandant (G–MTH);

§ 153.19 [Redesignated as § 153.190]

21. By redesignating § 153.19 as § 153.190 under the group heading, "General Vessel Requirements".

22. By amending Subpart A by adding §§ 153.30 and 153.40 to read as follows:

§ 153.30 Special area endorsement.

The Coast Guard endorses the Certificate of Inspection of a United States ship allowing it to operate in special areas if the ship owner—

(a) Requests the endorsement following the procedures in § 153.8;

(b) Shows that the ship meets the design and equipment requirements applying to ships operating in special areas contained in Regulations 5, 5A, and 8 of Annex II and the Standards for Procedures and Arrangements.

§ 153.40 Determination of materials that are hazardous.

Under the authority delegated by the Secretary of Transportation in 49 CFR 1.46(t) to carry out the functions under 49 U.S.C. 1803, the Coast Guard has found the following materials to be hazardous when transported in bulk:

(a) Materials listed in Table 30.25–1 of this chapter.

(b) Materials listed in Table 151.05.

(c) Materials listed in Table 1.[1]

(d) Materials listed in Table 4 of Part 154.

(e) Materials that are NLSs under MARPOL Annex II.

(f) Liquids, liquefied gases, and compressed gases, that are—

(1) Listed in 49 CFR 172.101;

(2) Listed in 49 CFR 172.102; or

(3) Listed or within any of the definitions in Subparts C through O of 49 CFR Part 173.

(g) Those liquid, liquefied gas, and compressed gas materials designated as hazardous in the premissions granted under § 153.900(d).[2]

Note 1: Those hazardous material cargoes designated Category A, B, C, and D in Table 1 are also Noxious Liquid Substances under Annex II and the Act to Prevent Pollution from Ships 33 USC 1901 *et seq.*

Note 2: The Coast Guard subsequently proposes in the Federal Register the addition of these designated hazardous materials to one of the tables referred to in paragraphs (a) through (d).

23. By revising the title of Subpart B to read as follows:

Subpart B—Design and Equipment

24. By removing the group heading "General" under Subpart B.

25. By amending § 153.214 by revising the introductory text to read as follows:

§ 153.214 Personnel emergency and safety equipment.

Each self-propelled ship must have the following:

* * * * *

26. By amending § 153.215 by adding introductory text to read as follows:

§ 153.215 Safety equipment lockers.

Each self-propelled ship must have the following:

* * * * *

27. By revising the introductory text to § 153.231(b) to read as follows:

§ 153.231 Type II system.

* * * * *

(b) Except as allowed in §§ 153.7 and 153.235—

* * * * *

28. By adding the following introductory text to § 153.234:

§ 153.234 Fore and aft location.

Except as allowed in § 153.7, each ship must meet the following:

* * * * *

29. By amending § 153.440 by revising the section leading and adding a new paragraph (a)(3) to read as follows:

§ 153.440 Cargo temperature sensors.

(a) * * *

(3) A cargo tank endorsed to carry a Category A, B, or C NLS must have a remote reading thermometer whose sensing element is located above the tank bottom at least one-eighth but no more than one-half the height of the tank if the cargo is—

(i) A Category A NLS or a Category B NLS having a viscosity of at least 25 mPa.s at 25°C;

(ii) a Category C NLS having a viscosity of at lease 60 mPa.s at 25 °C; or

(iii) a Category A, B, or C NLS that has a melting point greater than 0°C.

* * * * *

30. By amending § 153.460 by adding introductory text to read as follows:

§ 153.460 Fire protection systems.

Each self-propelled ship and each manned non-self-propelled ship must meet the following:

* * * * *

31. By adding §§ 153.469 through 153.491 grouped under a centered heading to read as follows:

DESIGN AND EQUIPMENT FOR POLLUTION CONTROL

Sec.	
153.469	Application of §§ 153.470 through 153.488.
153.470	System for discharge of NLS residue to the sea: Categories A, B, C, and D.
153.480	Stripping quantity for Category B and C NLS tanks on ships built after June 30, 1986: Categories B and C.
153.481	Stripping quantities and interim standards for Category B NLS tanks on ships built before July 1, 1986: Category B.
153.482	Stripping quantities and interim standards for Category C NLS tanks on ships built before July 1, 1986: Category C.
153.483	Alternative prewash for Category B and C NLS tanks on ships built before July 1, 1986: Category B and C.
153.484	Prewash equipment.
153.486	Design and equipment for removing NLS residue by ventilation: Categories A, B, C, and D.
153.488	Design and equipment for tanks carrying high melting point NLSs: Category B.
153.490	Cargo Record Book and Approved Procedures and Arrangements Manual: Categories A, B, C, and D.
153.491	Waiving of stripping equipment.

Design and Equipment for Pollution Control

§ 153.469 Application of §§ 153.470 through 153.488.

Sections 153.470 through 153.488 apply to each tank and each ship unless the requirements are waived under § 153.491.

§ 153.470 System for discharge of NLS residue to the sea: Categories A, B, C, and D.

The NLS residue discharge system required to discharge NLS residue of Category A, B, and C, and Category D NLS residue not diluted to 1/10th of its original concentration, into the sea under §§ 153.1126 and 153.1128 must meet the following:

(a) *Minimum diameter of an NLS residue discharge outlet.* The outlet of each NLS residue discharge system must have a diameter at least as great as that given by the following formula:

$$D = \frac{(Q_d)(\text{cosine } \phi)}{5L}$$

Where:

D=Minimum diameter of the discharge outlet in meters.

Q_d=Maximum rate in cubic meters per hour at which the ship operator wishes to discharge slops (note: Q_d affects the discharge rate allowed under § 153.1126(b)).

L=Distance from the forward perpendicular to the discharge outlet in meters.

ϕ=The acute angle between a perpendicular to the shell plating at the discharge location and the direction of the average velocity of the discharged liquid.

(b) *Location of an NLS residue discharge outlet.* Each NLS residue discharge outlet must be located—

(1) At the turn of the bilge beneath the cargo area; and

(2) Where the discharge from the outlet is not drawn into the ship's seawater intakes.

(c) *Location of dual NLS residue discharge outlets.* If the value of 6.45 for K is used in § 153.1126(b)(2), the NLS residue discharge system must have two outlets located on opposite sides of the ship.

§ 153.480 Stripping quantity for Category B and C NLS tanks on ships built after June 30, 1986: Categories B and C.

Category B and C NLS cargo tanks on each ship built after June 30, 1986 must have stripping quantities determined under § 153.1604 that are less than—

(a) 0.15 m^3 if Category B; and

(b) 0.35 m^3 if Category C.

§ 153.481 Stripping quantities and interim standards for Category B NLS tanks on ships built before July 1, 1986: Category B.

Unless waived under § 153.483, each Category B NLS cargo tank on ships built before July 1, 1986 must meet the following:

(a) Unless the tank meets the interim standard provided by paragraph (b) of this section, the tank must have a stripping quantity determined under § 153.1604 that is less than 0.35 m^3.

(b) Until October 3, 1994, the tank may have a total NLS residue determined under § 153.1608 that is less than 1.0 m^3 or 1/3000th of the tank's capacity and an NLS residue discharge system meeting the following:

(1) The system must be capable of discharging at a rate equal to or less than Q in the following formula:

$Q=KU^{1.4}L^{1.6}\times10^{-5}m^3/hr$

where:

K=4.3, except K=6.45 if the discharge is equally distributed between two NLS residue discharge outlets on opposite sides of the ship (see §§ 153.470 and 153.1126(c)).

L=ship's length in meters.

U=for a ship that is self-propelled, the minimum speed in knots specified in the approved Procedures and Arrangements Manual for discharging Category B NLS residue, but at least 7;

U=for a ship that is not self-propelled, the minimum speed in knots specified in the approved Procedures and Arrangements Manual for discharging Category B NLS residue, but at least 4.

(2) The system must have equipment capable of automatically recording—

(i) The time of day that discharge of NLS residue through the residue discharge system starts and ends; and

(ii) The dates on which discharge begins and ends unless the equipment allows a person to enter these dates on the record manually.

(3) Each system that has the capacity to exceed Q calculated in paragraph (b)(1) of this section must have equipment that—

(i) Records the NLS residue flow through the system; and

(ii) Is sufficiently accurate that its recorded values averaged over any 30 second period differ no more than 15% from the actual flow averaged over the same 30 second period.

(4) Unless the system automatically controls the flow rate, the system must have—

(i) Manual controls that must be moved at least 25% of the movement from fully closed to fully open for the discharge rate to change from 0.5Q to 1.5Q, where Q is the value calculated in paragraph (b)(1) of this section; and

(ii) A flow rate meter located where the flow is manually controlled.

§ 153.482 Stripping quantities and interim standards for Category C NLS tanks on ships built before July 1, 1986: Category C.

Unless waived under § 153.483, each Category C NLS cargo tank on ships built before July 1, 1986 must meet the following:

(a) Unless the tank meets the interim standards provided by paragraph (b) of this section, the tank must have a stripping quantity determined under § 153.1604 that is less than 0.95 m^3.

(b) Until October 3, 1994, the tank may have a total NLS residue determined under § 153.1608 that is less than 3.0 m^3 or 1/1000th of the tank's capacity.

§ 153.483 Alternative prewash for Categories B and C NLS tanks on ships built before July 1, 1986: Categories B and C.

At its discretion the Coast Guard waives §§ 153.481 and 153.482 under this section and allows a ship to carry Categories B and C NLS cargoes between ports or terminals in countries signatory to MARPOL 73/78 if the ship's owner requests a waiver following the procedures in § 153.10 and includes—

(a) A written pledge to—

(1) Limit the tank's carriage of Categories B and C NLSs to those ports or terminals listed in accordance with paragraph (b) of this section; and

(2) Prewash the cargo tank as required under § 153.1118 after each Category B or C NLS is unloaded;

(b) A list of each port or terminal at which the ship is expected to load or unload Categories B and C NLSs from the tank;

(c) An estimate of the quantity of NLS residue to be discharged to adequate reception facilities at each unloading port or terminal;

(d) Written statements from the owners of adequate reception facilities in each unloading port or terminal listed in accordance with paragraph (b) of this section who have agreed to take NLS residue from the ship showing the amount of NLS residue each agrees to take;

(e) A written attestation from the person in charge of each port or terminal that the country in which the port or terminal is located has determined the port or terminal to have adequate reception facilities for the NLS residue; and

(f) For ships requiring a Certificate of Inspection under § 153.900, a procedure that meets § 153.490(b)(2) that is included in the approved Procedures and Arrangements Manual.

§ 153.484 Prewash equipment.

Unless the ship has a waiver issued under § 153.491(b), to have its Certificate of Inspection or Certificate of Compliance endorsed to carry a Category A, B, or C NLS, the ship must have the following:

(a) A tank washing system capable of washing all interior tank surfaces of each tank that would carry the NLS, consisting of a wash water supply system and—

(1) A fixed tank washing machine in each tank; or

(2) A portable tank washing machine and, if required by the Coast Guard, equipment to move it during washing and when storing.

(b) Piping, valving, and crossovers needed to arrange the cargo piping so that the wash water passes through the cargo pump and cargo piping during tank washing or discharge of tank wash water.

(c) If the approved Procedures and Arrangements Manual specifies the hot water prewash required under § 153.1108, a means of supplying water to the tank washing machine under paragraph (a) of this section at—

(1) A temperature of at least 60°C (140 °F) when it leaves the washing machine; and

(2) The flow rate needed for the washing machine jets to reach all interior tank surfaces.

§ 153.486 Design and equipment for removing NLS residue by ventilation: Categories A, B, C, and D.

If NLS residue is to be removed from a cargo tank by ventilation, the ship must have—

(a) Openings in the tank deck near the sump or suction point;

(b) Portable forced air ventilating equipment fitting the ventilation openings required in paragraph (a) of this section and able to ventilate the extremities of the tank;

(c) An approved Procedures and Arrangements Manual with instructions that meet § 153.490(b)(3);

(d) A connector that allows a fan or air supply to be connected to the hose connections for the tank at the manifold; and

(e) A means for detecting whether liquid remains in the tank after ventilation.

§ 153.488 Design and equipment for tanks carrying high melting point NLSs: Category B.

For a ship to have its Certificate of Inspection or Certificate of Compliance endorsed allowing a tank to carry a Category B NLS with a melting point of 15 °C or more, the cargo tank must have—

(a) Cargo heating system; and

(b) Sides and bottom separate from the ship's side or bottom shell plating.

§ 153.490 Cargo Record Book and Approved Procedures and Arrangements Manual: Categories A, B, C, and D.

(a) For a ship's Certificate of Inspection or Certificate of Compliance to be endorsed to carry NLS cargo, the ship must have—

(1) If U.S., a Cargo Record Book published by the Coast Guard (OMB App. No. _____) [1], or, if foreign, a Cargo Record Book having the same entries and format as Appendix 4 of Annex II; and

(2) A procedures and Arrangements Manual meeting paragraph (b) of this section and approved by—

(i) The Coast Guard, if the ship is a United States ship or one whose administration is not signatory to MARPOL 73/78; or

(ii) The Administration, if the ship is one whose administration is signatory to MARPOL 73/78.

(b) Each Procedures and Arrangements Manual under paragraph (a)(2) of this section must include the following:

(1) The standard format and content prescribed in Chapter 2 and Appendix D of the IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances,* Resolution MEPC 18(22), 1985.

(2) If the ship has a cargo under a waiver issued under § 153.483, procedures ensuring that—

(i) Category B and C NLSs are discharged from the tank only in the ports or terminals listed under § 153.483(b); and

(ii) The tank is prewashed after discharging each Category B or C NLS unless § 153.1114 allows the prewash to be omitted.

(3) If ventilation is used to clean a tank under § 153.1102(b)(2), Ventilation procedures that meet those in Appendix C of the IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances,* Resolution MEPC 18(22), 1985.

(4) If tank cleaning agents are used, quantities to use and instructions on how to use the cleaning agents.

(5) If the tank has the discharge recording equipment required in § 153.481(b), procedures to ensure that no NLS residue is discharged from the tank when the recording equipment is incapacitated unless the concentration and total quantity limits for the NLS in Annex II are not exceeded.

§ 153.491 Waiving of stripping equipment.

(a) The Coast Guard waives §§ 153.480 through 153.488 and endorses a ship's Certificate of Inspection or Certificate of Compliance allowing a tank to carry a single, specific NLS cargo and no other cargo if the ship's owner—

(1) Requests a waiver following the procedures in § 153.10; and

(2) Pledges in writing that while any waiver is in effect the cargo tank will—

(i) Carry only the NLS cargo listed on the Certificate of Inspection or Certificate of Compliance;

(ii) Carry no cargo other than the NLS; and

(iii) Not be washed or ballasted unless the wash water or ballast water is discharged to an adequate reception facility.

(b) The Coast Guard waives §§ 153.470 and 153.490 if—

(1) The ship's owner requests a waiver following the procedures in § 153.10;

(2) The Coast Guard has issued a waiver to each of the ship's tanks under paragraph (e) of this section; and

(3) The ship's owner adds to the cargo operations manual any provisions for preventing NLS discharge specified by the Commandant (G–MTH) as a condition for issuing the waiver.

32. By revising § 153.900 to read as follows:

§ 153.900 Certificates and authorization to carry a bulk liquid hazardous material.

(a) Except as allows in 33 CFR 151.32 and 33 CFR 151.34, no ship may carry a cargo of bulk liquid hazardous material listed in Table 1 or the residue of a bulk liquid hazardous material that is an NLS listed in Table 1 unless the ship meets the following:

(1) The cargo must be carried in a cargo tank.

(2) If a United States ship, the ship must have a Subchapter D or I Certificate of Inspection that is endorsed to allow the cargo tank to carry the cargo.

(3) If a foreign ship, the ship must have a Certificate of Compliance that is endorsed to allow the cargo tank to carry the cargo.

(4) The ship must have an IMO Certificate of Fitness issued under § 153.12 that is endorsed to allow the cargo tank to carry the cargo if it is in foreign waters and is—

(i) A United States self-propelled ship; or

(ii) A United States non-self-propelled ship and the cargo is a Category A, B, or C NLS.

(b) No ship may carry an oil-like NLS listed in Table 1 of this part and in Table 2 of 33 CFR Part 151 unless the ship has—

(1) A Certificate of Inspection endorsed under this part to allow the carriage of the oil-like NLS; or

(2) An IOPP Certificate or NLS Certificate endorsed under 33 CFR 151.37(a) to allow carriage of the oil-like NLS.

(c) No ship may carry any bulk liquid cargo not listed in Table 1, Table 2, Table 4 of Part 154 of this chapter, § 30.25–1 of this chapter, or Table 1 of 33 CFR Part 151 without written permission from the Commandant (G–MTH) under paragraph (d) of this section naming the bulk liquid hazardous material or NLS.

(d) The Coast Guard at its discretion grants the written permission required in paragraph (c) if—

(1) The shipowner—

[1] See the Appendix to this document for the proposed Cargo Record Book.

(i) Sends a request to the Commandant (G–MTH); and

(ii) Supplies any information the Coast Guard needs to develop carriage requirements for the bulk liquid cargo; and

(2) The ship—

(i) Has a Certificate of Inspection, Certificate of Compliance, or IOPP Certificate as specified by the Commandant (G–MTH);

(ii) Meets those design and equipment requirements of this part specified by the Commandant (G–MTH); and

(iii) Meets any additional requirements made by the Commandant (G–MTH).

33. By revising § 153.901 to read as follows:

§ 153.901 Documents: posting, availability, and alteration.

(a) No person may operate a United States ship unless the endorsed Certificate of Inspection is readily available in the wheelhouse.

(b) No person may operate a foreign ship unless the endorsed Certificate of Compliance is readily available in the wheelhouse.

(c) No person may operate a ship under an alternative or waiver granted under this part unless the document granting the alternative or waiver is attached to the ship's Certificate of Inspection or Certificate of Compliance.

(d) Except as allowed in paragraph (e) of this section, the Coast Guard does not accept the following if altered:

(1) Certificates of Inspection.

(2) Certificates of Compliance.

(3) Certificates of Fitness, unless the alteration is by the issuing authority.

(4) Approved Procedures and Arrangements Manuals, unless the alteration is approved by the issuing authority.

(e) A person wishing to change a Procedures and Arrangements Manual approved by the Coast Guard must submit a copy to the Coast Guard following the procedures for requesting an endorsed Certificate of Inspection in § 153.8.

34. By revising § 153.902 to read as follows:

§ 153.902 Expiration and invalidation of the Certificate of Compliance.

(a) The Certificate of Compliance shows its expiration date.

(b) The endorsement of a Certificate of Compliance under this part is invalid if the ship's IMO Certificate expires or becomes invalid.

(c) The Coast Guard reinstates, at its discretion, the endorsement of a Certificate of Compliance invalidated under paragraph (b) of this section if the ship's owner submits a copy of the IMO Certificate to the Commandant (G–MTH) after the IMO Certificate is revalidated or reissued.

Note.—See § 153.809 for procedures for having a Certificate of Compliance reissued.

35. By adding a new § 153.903 to read as follows:

§ 153.903 Operating a United States ship in special areas: Categories A, B, and C.

No person may operate a United States ship in a special area unless—

(a) The ship's Certificate of Inspection is endorsed for special areas under § 153.30; and

(b) The ship meets the operating requirements applying to special areas in Regulations 5, 5A, 8 and the Standards for Procedures and Arrangements of Annex II.

36. By adding § 153.906 to read as follows:

§ 153.906 Reporting equipment failures and replacing equipment.

(a) The person in charge of a ship shall report to a Coast Guard Marine Inspection Office, Marine Safety Office, or Captain of the Port within 24 hours if equipment required in Subpart B of this part fails.

(b) No person shall replace a piece of equipment by this part unless the replacement is—

(1) Identical to the original equipment; or

(2) Allowed as an alternative under § 153.10.

37. By adding § 153.908 to read as follows:

§ 153.908 Cargo viscosity and melting point information; measuring cargo temperature during discharge: Categories A, B, and C.

(a) The person in charge of the ship may not accept a shipment of a Category A, B, or C NLS cargo having a reference to this paragraph in the "Special Requirements" column of Table 1 unless the person has, from the cargo's manufacturer or the person listed as the shipper on the bill to lading, a written statement of the following:

(1) For Category A or B NLS, the cargo's viscosity at 20 °C in mPa.s and, if the cargo's viscosity exceeds 25 mPa.s at 20 °C, the temperature at which the viscosity is 25 mPa.s

(2) For Category C, NLS the cargo's viscosity at 20 °C in mPa.s and, if the cargo's viscosity exceeds 60 mPa.s at 20 °C, the temperature at which the viscosity is 60 mPa.s

(b) The person in charge of the ship may not accept a shipment of a Category A, B, or C cargo having a reference to this paragraph in the "Special Requirements" column of Table 1 unless the person has a written statement of the cargo's melting point in °C from the cargo's manufacturer or the person listed as the shipper on the bill of lading.

(c) The person in charge of the ship shall ensure that the cargo temperature is read and recorded in the cargo record book following the procedures in paragraph (d) of this section when a cargo having a reference to paragraph (a) or (b) of this section in the "Special Requirements" column of Table 1 is unloaded.

(d) A cargo temperature must be measured using the following procedure:

(1) Each reading must be made with the thermometer required by § 153.440(a)(3).

(2) A total of 2 readings must be made, the first reading to be made no more than 30 minutes after cargo transfer begins and the second reading no more than 30 minutes before the main cargo pump is shut down.

(3) The cargo's temperature is the average of the 2 readings made under paragraph (d)(2) of this section.

38. By adding § 153.909 to read as follows:

§ 153.909 Completing the Cargo Record Book and record retention: Categories A, B, C, and D.

(a) The person in charge of a ship shall ensure that the Cargo Record Book required under §153.490 is completed immediately after any of the following occurs:

(1) An NLS cargo is loaded.

(2) An NLS cargo is transferred between tanks on a ship.

(3) An NLS cargo is unloaded from a tank.

(4) A tank that last carried an NLS cargo is prewashed under this part.

(5) A tank that last carried an NLS cargo is washed, except as reported under subparagraph (4) of this paragraph, cleaned, or ventilated.

(6) Washings from a tank that last carried an NLS cargo are discharged to the sea.

(7) Tanks that last carried an NLS cargo are ballasted.

(8) Ballast water is discharged to the sea from a cargo tank that last carried an NLS.

(9) An NLS cargo or cargo residue is discharged to the sea by accident or except as allowed by this part.

(10) A Surveyor supervises an operation required by this part.

(11) NLS residue or NLS cargo is transferred from cargo pumproom bilges or transferred to an incinerator; a waiver is issued to the ship, ship owner,

ship operator, or person in charge of the ship under this part; the concentration of a Category A NLS residue is measured under § 153.1120(a); or any discharge recording equipment required by § 155.481(b)(2) fails.

(b) The person in charge of the ship shall ensure that the Cargo Record Book is on board and readily available for inspection and copying by the Coast Guard.

(c) Each officer in charge of, and each Surveyor overseeing, an operation listed under paragraph (a) of this section shall sign, after the entries in the Cargo Record Book concerning that operation, attesting to the accuracy and completeness of the entries.

(d) After all the entries on a page of the Cargo Record Book are completed, and if the person in charge of the ship agrees with the entries, the person in charge of the ship shall sign the bottom of that page.

(e) The ship owner or operator shall ensure that—

(1) Each Cargo Record Book is retained on board the ship for at least 3 years after the last entry; and

(2) Each discharge recording required by § 153.1126(b)(1) is retained on board the ship for at least three years.

39. By adding §§ 153.1100 through 153.1132 grouped under a centered heading to read as follows:

Handling of Categories A, B, C, and D Cargo and NLS Residue

Sec.

Handling of Categories A, B, C, and D Cargo and NLS Residue

§ 153.1100 Responsibility of the person in charge.

The person in charge of the ship shall ensure that—

(a) The requirements of §§ 153.1102 through 153.1132 are met; and

(b) The procedures in the approved Procedures and Arrangements Manual are followed.

§ 153.1101 Procedures for getting a Surveyor; approval of Surveyors.

(a) At least 24 hours before a Surveyor is needed, the person wishing the services of a Surveyor must contact the Captain of the Port or the Marine Safety Office that has jurisdiction over the port at which the Surveyor will be needed to—

(1) Arrange for the Coast Guard to provide a Surveyor; or

(2) Inform the Coast Guard of the selection of a Surveyor from one of the organizations accepted by the Coast Guard to provide Surveryors.

(b) Organizations may be accepted by the Coast Guard to provide Surveyors if they—

(1) Are engaged, as a regular part of their business, in performing inspections or tests of bulk liquid cargo tanks or bulk liquid cargo handling equipment;

(2) Are familiar with the references in § 153.0(b) and with the requirements of this part;

(3) Are not controlled, by the owners or operators of ships needing the services of the Surveyors or the facilities at which those ships would offload cargo;

(4) Are not dependent on Coast Guard acceptance under this section to remain in business; and

(5) Sign a Memorandum of Understanding with the Coast Guard.

(c) Each application for acceptance as a Surveyor must be submitted to the Commandant (G–MTH) and must contain the following:

(1) The name and address of the organization, including subsidiaries and divisions, requesting acceptance by the Coast Guard to provide Surveyors.

(2) A statement that the organization is not controlled by the owners or operators of ships needing the services of Surveyors or the facilities at which these ships would offload, or a full disclosure of any ownership or controlling interest held by such parties.

(3) A description of the experience and qualifications of the personnel who would be performing the function of Surveyor.

(4) A statement that the persons who will be performing the function of Surveyor have been trained in and are familiar with the requirements of Annex II and the regulations in this part.

(5) A statement that the Coast Guard may verify the information submitted in the application and may examine the persons who will be performing the function of Surveyor to determine their qualifications.

(d) The acceptance of an organization may be terminated by the Commandant if the organization fails to properly perform or supervise the inspections required in this part.

§ 153.1102 Handling and disposal of NLS residue: Categories A, B, C, and D.

(a) Except those Category A NLS residues that must be discharged under paragraph (c) of this section, NLS residue from an NLS whose vapor pressure is 5 kPa (50 mbar) or less at 20 ° C (68° F) must be—

(1) Discharged to an adequate reception facility;

(2) Retained on the ship; or

(3) Discharged to the sea following procedures in this part that allow the NLS residue to be discarged to the sea.

(b) Except those Category A NLS residues that must be discharged under paragraph (c) of this section, NLS residue from an NLS whose vapor pressure is greater than 5 kPa (50 mbar) at 20° C must be—

(1) Handled in the same way as the NLS residue under paragraph (a) of this section; or

(2) Ventilated following a ventilation procedure in the approved Procedures and Arrangements Manual when allowed by the Surveyor, as indicated by the Surveyor's entry in the Cargo Record Book.

(c) NLS residue containing Category A NLS in pumproom bilges and in spill trays at the manifold must be discharged to an adequate reception facility.

§ 153.1104 Draining of cargo hose: Categories A, B, C, and D.

Before a cargo hose containing a Category A, B, C, or D NLS is disconnected after unloading the NLS cargo, the hose must be drained back to the transfer terminal.

§ 153.1106 Cleaning agents.

No tank cleaning agent may be used except as prescribed in the approved Procedures and Arrangements Manual.

§ 153.1108 Heated prewash for solidifying NLS and high viscosity NLS: Categories A, B, and C.

(a) When a cargo of high viscosity NLS or solidifying NLS is unloaded from a cargo tank, the tank must be prewashed following the procedures in § 153.1120(b) using wash water that leaves the tank washing machine at a temperature of at least 60° C (140° F) unless § 153.1114 or paragraph (b) of this section allows the prewash to be omitted.

(b) The prewash required under paragraph (a) of this section may be omitted if the temperature of all interior cargo tank surfaces throughout unloading is—

(1) Greater than the temperature of the cargo's melting point and the cargo is a Category B or C solidifying NLS; or

(2) Greater than the temperature at which the cargo viscosity exceeds—

(i) 25 mPa.s, if the cargo is a high viscosity NLS that is a Category A or Category B; or

(ii) 60 mPA.s, if the cargo is a high viscosity Category C NLS.

§ 153.1112 Prewash for tanks containing Category A NLS residue.

Unless § 153.114 allows the prewash to be omitted, a cargo tank that unloads a Category A NLS must be prewashed following the procedures in § 153.1120.

§ 153.1114 Conditions under which a prewash may be omitted: Categories A, B, and C.

A prewash required by this part may be omitted if either of the following requirements is met:

(a) the cargo tank must not be washed or ballasted before it is loaded with the next cargo and a Surveyor has signed a statement in the Cargo Record Book that the next cargo may be loaded without cleaning the tank.

(b) The cargo tank must not be washed or ballasted before being cleaned using a ventilation procedure in the approved Procedures and Arrangements Manual and a Surveyor has signed a statement in the Cargo Record Book that the approved Procedures and Arrangments Manual contains procedures for removing the NLS residue by ventilation.

§ 153.1116 Prewash for tanks unloaded without following the approved Procedures and Arrangements Manual; Categories B and C.

If for any reason more Category B or C NLS residue remains in a tank and transfer piping of a ship after discharge than would remain after a normal discharge of the cargo using the loading procedures in the approved Procedures and Arrangements Manual, the tank must be prewashed following the procedures in § 153.1120 unless—

(a) Section 153.1114 allows the prewash to be omitted; or

(b) A Surveyor certifies in the Cargo Record Book that the cargo tank contains less NLS residue as puddles than it would if it were discharged following the procedures in the approved Procedures and Arrangements Manual and no other prewash is required by this part.

§ 153.1118 Prewash of Categories B and C cargo tanks not meeting stripping standards: Categories B and C.

(a) Unless § 153.1114 allows the prewash to be omitted, a cargo tank from which a Category B NLS is unloaded must be prewashed using the procedures in § 153.1120(b) if the tank—

(1) Operates under the interim standard in § 153.481(b); or

(2) Has a waiver issued under § 153.483.

(b) Unless § 153.1114 allows the prewash to be omitted, a cargo tank from which a Category C NLS is unloaded must be prewashed using the procedures in § 153.1120(b) if the tank has a waiver issued under § 153.483.

§ 153.1119 When to prewash and discharge NLS residues from a prewash: Categories A, B, and C.

(a) Except as allowed in paragraphs (b) and (c) of this section, each prewash required by this subpart must be completed and all tank washings must be discharged to an adequate reception facility before the ship leaves the unloading port.

(b) NLS residue from the prewash following the unloading of a Category B NLS may be transferred to a slop tank for discharge under § 153.1126 instead of being discharged under paragraph (a) of this section if the prewash is required solely under § 153.1118(a)(1).

(c) A tank is required by this part to be prewashed may be prewashed in a port other than the unloading port if the following conditions are met:

(1) The person in charge requests permission from the Commandant (G-MTH) and supplies with the request—

(i) the name of the ship;

(ii) The name of the owner;

(iii) The name of the NLS;

(iv) The approximate date the tank will be prewashed;

(v) A written agreement to receive the tank washings by an adequate reception facility in a port or terminal of a country that has ratified MARPOL 73/78;

(vi) A written certification from the country in which the port is located that the facility is an adequate reception facility;

(vii) Written pledges from the person in charge that—

(A) The tank to be prewashed will not be washed or ballasted before being prewashed; and

(B) The ship will be taken to the adequate reception facility and the tank prewashed in accordance with the requirements in § 153.1120; and

(viii) Any additional information the Commandant (G-MTH) requests to evaluate granting the permission.

(2) The Commandant (G-MTH) has granted the permission, and a Surveyor has endorsed an entry in the Cargo Record Book stating that the permission has been granted.

(d) Unless the permission granted under paragraph (c) of this section includes alternate conditions of termination or revocation in writing, the permission is—

(1) Terminated after the tank is prewashed as pledged in paragraph (c)(2)(ii) of this section or loaded with another cargo;

(2) Revoked if either of the pledges in paragraph (c)(2) is invalidated or the agreement in paragraph (c)(1)(i) of this section is repudiated; and

(3) Revoked at any time the ship is not operated in accordance with the pledges in paragraph (c)(2) of this section and the conditions listed with the permit.

§ 1530.1120 Procedures for tank prewash: Categories A, B, and C.

(a) Each Category A NLS cargo tank prewash must meet the procedure in paragraph (b) of this section or meet the following:

(1) The prewash may not begin until—

(i) A Surveyor is present; and

(ii) Instrumentation or equipment is available that is capable of measuring the concentration of the Category A NLS in the NLS residue and determining whether it is below 0.1 percent by weight unless the NLS is carbon disulfide, and 0.01 percent by weight if the NLS is carbon disulfide.

(2) Ony the equipment specified in § 153.484 may be used for the prewash.

(3) The water or tank washings must pass through the cargo pump and piping during washing or during discharge of tank washings.

(4) The tank washing machine jet must reach all tank surfaces or must be moved to reach all tank surfaces.

(5) When enough tank washings collect in the bottom of the tank for the pump to gain suction, the tank must be pumped out. When the NLS is

immiscible with water or is a solidifying cargo, all floating and suspended NLS must be discharged at this time.

(6) The washing machine must be operated until the Surveyor determines, by sampling and testing the discharged tank washings using the equipment required by paragraph (a)(1)(ii) of this section, that the concentration of NLS in the tank washings is below the concentration specified for the measuring equipment in that paragraph.

(7) After the washing is stopped, the tank washings remaining must be pumped out.

(8) The Cargo Record Book must have items 12 through 14 completed and must show the Surveyor's written certification of their accuracy.

(9) The Cargo Record Book must have the Surveyor's written concurrence that the prewash procedures specified in the approved Procedures and Arrangements Manual were followed.

(b) Each Category B or C cargo tank prewash and each Category A cargo tank prewash not meeting paragraph (a) of this section must meet the following:

(1) The prewash may not begin until a Surveyor authorized under Part 2 is present unless the prewash is required solely by § 153.1118(a)(1).

(2) Only the equipment specified in § 153.484 may be used for the prewash.

(3) The water or tank washings must pass through the cargo pump and piping during washing or during discharge of tank washings.

(4) Except as required in paragraph (b)(5) of this section, the number of washing machine cycles specified in Table 3 must be completed. If a prewash is required by a section listed under Column 1 of Table 3 and another section listed under Column 2, the number of cycles in Column 1 must be completed but no additional cycles are necessary.

(5) If a tank washing machine that must be moved for the washing jets to reach all tank surfaces is used to prewash a tank from which a Category A NLS or a solidfying NLS has been unloaded, the number of washing machine cycles specified in Table 3 must be completed at each position the washing machine is placed.

(6) The tank must be pumped out each time enough tank washings collect in the bottom of the tank for the pump to gain suction; or the procedures in paragraphs (b)(3), (b)(4), and (b)(5) of this section must be repeated two additional times for a total of three washings. When the NLS is immiscible with water or is a solidifying cargo, all floating and suspended NLS must be discharged.

(7) Items 12 through 14 in the cargo Record Book must be completed and verification that the procedures specified in the approved Procedures and Arrangements Manual were followed shown by the Surveyor's endorsement in the Cargo Record Book.

TABLE 3.—NUMBER OF WASHING MACHINE CYCLES IN THE PREWASH PROCEDURE

	Number of washing machine cycles	
	Column 1: Prewash under § 153.1108 or 153.1116	Column 2: Prewash under § 153.1112 or 153.1118 but not under § 153.1108 or 153.1116
Category A NLS, and if Table 1 specifies a maximum allowable NLS concentration at the end of prewash of 0.1%	2	1
Category A NLS, and if Table 1 specifies a maximum allowable NLS concentration at the end of prewash of 0.01%	3	2
Category B or C NLS	1	½

§ 153.1122 Discharges of NLS residue from tank washing other than a prewash: Categories A, B, and C.

Tank washings that do not result from a prewash and that contain Category A, B, or C NLS residues must be discharged to an adequate reception facility or discharged to the sea under § 153.1126 or 153.1128 except those tank washings resulting from washing a tank that has been cleaned following a ventilation procedure in the approved Procedures and Arrangements Manual.

§ 153.1124 Discharges of Category D NLS residue.

NLS residue from Category D NLSs must be discharged to an adequate reception facility or discharged to the sea using the following procedure:

(a) Before discharge begins, drain or flush the NLS residue in the tank's piping systems into the tank.

(b) After draining or flushing, discharge the NLS residue to the sea in accordance with § 153.1128 or transfer it to a slop tank and discharge in accordance with § 153.1126.

§ 153.1126 Discharge of NLS residue from a slop tank: Categories A, B, C, and D.

NLS residue in a slop tank may be discharged into the sea if—

(a) The ship meets the conditions for discharging NLS residue from a cargo tank in § 153.1128; and

(b) For Category B NLS residue transferred to the slop tank under § 153.1119(b), the NLS is discharged—

(1) Through an NLS residue discharge system with the flow recording equipment required in § 153.481(b)(2) operating; and

(2) At a rate maintained at or below Q in the following:

For tank contents that are miscible:

$$Q = \frac{VKU^{1.4}L^{1.6}}{N} \times 10^{-5} m^3/hr$$

For tank contents that are immiscible:

$Q = KU^{1.4}L^{1.6} \times 10^{-5}$ m³/hr

where:

Q = maximum permissible slop discharge rate in cubic meters per hour

V = volume of slops in the tank in cubic meters

K = 4.3; except K = 6.45 if Q is distributed between two NLS residue discharge outlets on opposite sides of the ship (see §§ 153.470(c) and 153.481(b))

U = ship's speed in knots

L = ship's length in meters

N = number of tanks containing Category B NLS residue pumped into the slop tank

§ 153.1128 Conditions for discharge of NLS residue from a cargo tank to the sea: Categories A, B, C, and D.

All discharges of NLS residue must be made with the ship at least 22.24 km (12 nautical miles) from the nearest land and under the following conditions:

(a) Each ship that discharges Category B or C NLS residue diluted to less than 1 ppm of the NLS must be in water at least 25 m (76.2 ft) deep;

(b) Each ship that discharges Category B or C NLS residue must be in water at least 25 m (76.2 ft) deep if the NLS residue results from washing a tank after the following washing procedure has been completed:

(1) If the tank is not required to be prewashed under this part, the tank must be washed following the procedures that apply to a prewash of a Category B NLS in § 153.1120 using one washing machine cycle, and the tank washings discharged to an adequate reception facility or to the sea under § 153.1126 or paragraphs (a), (d) and (e) of this section.

(2) After the tank has been prewashed or has been washed under paragraph (a)(1) of this section, the tank must then be washed with one cycle of the tank washing machine, and the tank washings discharged to an adequate reception facility or to the sea under § 153.1126 or paragraphs (a), (b), (e) and (f) of this section.

(c) Each ship that discharges a Category D NLS diluted with water until the volumetric ratio of water to NLS is 10 to 1 (0.09% by volume concentration of NLS in water) must be—

(1) If self-propelled, maintained at a speed of at least 12.97 km/hr (7 knots); and

(2) If not self-propelled, maintained at a speed of at least 7.41 km/hr (4 knots).

(d) Each ship built before July 1, 1986 that discharges Category A, B or C NLS residues before January 1, 1988 must—

(1) Be in water at least 25 m (76.2 ft) deep;

(2) If self-propelled, be maintained at a speed of at least 12.97 km/hr (7 knots); and

(3) If not self-propelled, be maintained at a speed of at least 7.41 km/hr (4 knots).

(e) Discharges of NLS residue other than those under paragraphs (a) through (d) of this section must be made with the ship—

(1) In water at least 25 m (76.2 ft) deep;

(2) Discharging at a rate not exceeding that used for Q_d in § 153.470;

(3) If self-propelled, maintained at speed no less than the minimum specified in the approved Procedures and Arrangements Manual but at least 12.97 km/hr (7 knots);

(4) If not self-propelled, maintained at a speed no less than the minimum specified in the approved Procedures and Arrangements Manual but at least 7.41 km/hr (4 knots); and

(5) Discharging through an NLS residue discharge system meeting § 153.470.

§ 153.1130 Failure of slops discharge recording equipment: Category B.

The following conditions apply when discharge recording equipment required under § 153.481(b)(2) fails:

(a) No NLS residue may be discharged unless the approved Procedures and Arrangements Manual contains procedures for discharging with incapacitated discharge recording equipment and these procedures are followed.

(b) The failure of the discharge recording equipment must be recorded in the Cargo Record Book within 24 hours after the failure.

(c) If the ship operates under a Certificate of Inpection, the failed discharge recording equipment must be repaired or replaced within 60 days after it fails, and the repair or replacement recorded in the Cargo Record Book and reported to the Coast Guard within 24 hours after it is completed.

§ 153.1132 Reporting spills and non-complying discharges: Category A, B, C, and D.

The person in charge of a ship that carries and NLS shall report, following the procedures applying to oil in 33 CFR 151.15 (c), (d), (g), (h), the following:

(a) All discharges of the NLS that do not meet the requirements of this part.

(b) All spills into the water.

40. By adding the following new subpart:

Subpart D—Test and Calculation Procedures for Determining Stripping Quantity, Clingage NLS Residue, and Total NLS Residue

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Subpart D—Test and Calculation Procedures for Determining Stripping Quantity, Clingage NLS Residue, and Total NLS Residue

§ 153.1600 Equipment required for conducting the stripping quantity test.

The operator shall ensure the stripping quantity test is conducted with—

(a) Equipment that maintains a backpressure of at least 100 kPa (1 atm) at the manifold connection of the discharge line of the tank to be tested, including, but not limited to, piping whose discharge is 10 m above the manifold or a constant pressure valve in the discharge line and set at 100 kPa;

(b) A container for measuring the volume of water remaining in the tank to an accuracy of ±5%;

(c) A squeegee or broom to collect standing water on the tank floor;

(d) One or more containers for collecting and transferring water; and

(e) One of the following for transferring the water remaining in the tank to the measuring container:

(1) A wet vacuum.

(2) A positive displacement pump.

(3) An eductor with an air/water separator in line.

§ 153.1602 Test procedure for determining the stripping quantity.

(a) The stripping quantity of a tank must be determined by testing the tank under the procedures in paragraph (b) of this section unless the Coast Guard agrees under the provisions of § 153.10 to accept the stripping quantity, previously determined under paragraph (b) of this section, of a tank having similar geometry, internal structure, and piping system.

(b) When testing a tank for stripping quantity, the owner or operator of the ship shall proceed as follows:

(1) Clean and gas free the tanks to be tested.

(2) Determine the least favorable values of list and trim for drainage within the range allowed by the approved Procedures and Arrangements Manual.

(3) Maintain the ship's list and trim during the test within ±0.1° of that determined under paragraph (b)(2) of this section.

(4) Load the tank with enough water so that unloading the water simulates the final stages of unloading a full tank of cargo.

(5) Pump out the water and strip the tank using the procedures specified in the approved Procedures and Arrangements Manual.

(6) After shutting the manifold valve, open any cargo pump foot valve to allow water trapped in the cargo pump to drain into the tank.

(7) Open all valves in the piping system except the manifold valve and allow the water to drain into the tank.

(8) Squeegee or sweep the water drained under paragraphs (b)(6) and (b)(7) of this section and any water that stands in puddles on the tank floor to the tank's low point or sump and collect in the container required by § 153.1600(b) using the equipment required in § 153.1600(e).

(9) With the manifold valve still closed, drain any water remaining in the piping system on the ship's side of the cargo transfer manifold valve into containers, and add this water to that collected from the tank under paragraph (b)(8) of this section. The Coast Guard allows the water collected from a cargo line serving a block of tanks to be pro-rated between all the tanks it serves if—

(i) The ship owner requests, under the provisions of § 153.10, that the water be pro-rated; and

(ii) The ship's approved Procedures and Arrangements Manual specifies that no tank in the block be washed until all the tanks in the block have been discharged.

(c) Include any water that is trapped in dead end pipe sections, either by—

(1) Draining the pipe sections and adding the water to that collected in the container under paragraphs (b)(8) and (b)(9) of this section; or

(2) Adding an estimate of the water's volume to the sum calculated in paragraph (d) of this section using the pipe's dimensions, the ship's list and trim, and the geometry of the piping system.

(d) Measure the volume of water collected in the container under paragraphs (b)(8), (b)(9), and (c)(1) of this section and add to this volume the volume, if any, estimated under paragraph (c)(2) of this section.

§ 153.1604 Determining the stripping quantity from the test results.

(a) For a single test, the stripping quantity is the volume of water measured under § 153.1602(d).

(b) If multiple tests are made on a tank without modifications to the tank, pumping system, or stripping procedure between the tests, the stripping quantity must be taken as the average of the stripping quantities for all of the tests.

(c) If multiple tests are made on a tank with modifications to the tanks, pumping system, or stripping procedure between the tests, the stripping quantity is the stripping quantity determined under paragraph (b) of this section using only tests performed after the last modification.

§ 153.1608 Calculation of total NLS residue and clingage NLS residue.

(a) The total NLS residue for each tank is calculated by adding the stripping quantity and the clingage NLS residue.

(b) The clingage NLS residue for each tank is calculated using the following formula:

$$Q_{clingage} = 1.1 \times 10^{-4} A_d + 1.5 \times 10^{-5} A_w + 4.5 \times 10^{-4} L^{1/2} A_b$$

Where:

A_b = Area of the tank bottom added to the area in square meters of tank structural components projected on a horizontal surface

A_d = Area of the tank underdecks added to the area in square meters of tank structural components projected on a horizontal surface

A_w = Area of the tank walls added to the area in square meters of tank structural components projected on a vertical surface

L = Length of tank in meters from fore to aft.

When using the formula in this paragraph, areas that are inclined more than 30° from the horizontal may be assumed to be vertical.

Note.—The Commandant (G–MTH) (tel # 202–267–1217) has information that may be useful in approximating surface areas of typical structural members for the projected area calculations under § 153.1608(b).

41. By revising Table 1 to read as follows:

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
#Acetic acid	C	III	4m	PV	Restr	A	.238(a), .440, .527, .554, .908(b)	I–D
Acetic anhydride	C	II	4m	PV	Restr	A	.238(a), .526, .527, .554	I–D
#Acetone cyanohydrin	A	II	B/3	PV	Closed	A	.238(a), .316, .336, .408, .525, .526, .527, .912(a)(2), .933, .1002, .1004, .1020, .1035.	I–D
Acetonitrile	III	II	B/3	PV	Restr	A	.525, .526, .1020	I–D
Acrylamide solution (50% or less)	D	II	NR	Open	Closed	NSR	.409, .525(a), (c), (d), (e), .912(a)(1), .1002(a), .1004, .1020.	NA
Acrylic acid	D	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	I–D
Acrylonitrile	B	II	B/3	PV	Closed	A	.236(a), (c), (d), 316, .408, .525, .526, .527, .912(a)(1), .1004, .1020.	I–D
#Adiponitrile	D	III	4m	PV	Restr	A	.526	I–D
*Alkyl acrylate—Vinyl pyridine copolymer in Toluene.	C	III	4m	PV	Restr	A	.409	NA
Alkyl benzene sulfonic acid (greater than 4%).	C	III	NR	Open	Open	B	.440, .908(a)	NA
Allyl alcohol	B	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .933, .1020	I–C
Allyl chloride	B	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I–D
2-(2-Aminoethoxy) ethanol	D	III	NR	Open	Open	A, C, D	.236(b), (c), .409	NA
Aminoethylethanolamine	D	III	NR	Open	Open	A	.236(a), (b), (c), (g)	NA
*N-Aminoethylpiperazine	D	III	4m	PV	Restr	A, C, D	.236(b), (c), 409, .526	I–C
*2-Amino-2-methyl-1-propariol (90% or less).	D	III	NR	Open	Open	A	None	I–D [18]
Ammonium hydroxide (28% or less NH_3).	C	III	4m	PV	Restr	C	.236(b), (c), (f), .526, .527	I–D
*Ammonium nitrate solution (greater than 45% and less than 93%).	D	II	NR	Open	Open	NSR	.336, .409, .554(a), (b)	NA
*Ammonium sulfide solution (45% or less).	B	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525, .526, .933, .1002, .1020.	I–D
*Ammonium thiosulfate solution (60% or less).	C	III	NR	Open	Open	NSR		NA
*(commercial, iso-, n-, sec-) Amyl Acetate.	C	III	4m	PV	Restr	A	.409	I–D
#Aniline	C	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	I–D
#Benzene or hydrocarbon mixtures containing 10% or more Benzene.	C	III	B/3	PV	Restr	B	.316, .440, .526, .908(b), .1060	I–D
Benzenesulfonyl chloride	D	III	4m	PV	Restr	B, D	.236(a), (b), (c), (g), .409, .526	I–D
*Benzyl alcohol	C	III	NR	Open	Open	A	None	I–D
# Benzyl chloride	B	II	B/3	PV	Closed	B	.316, .408, .525, .526, .527, .912(a)(2), .1004, .1020.	I–D
*(iso-, n-) Butyl acetate	C	III	4m	PV	Restr	A	.409	I–D
(iso-, n-) Butyl acrylate	D	II	4m	PV	Restr	A	.526, .912(a)(1), .1002(a), (b), .1004	I–D
#Butylamine (all isomers)	C	II	B/3	PV	Restr	A	.236(b), (c), .316, .408, .525, .526, .527, .1020.	I–D
*Butyl benzyl phthalate	A	II	NR	Open	Open	A	.409, .440, .908(a)	I–D
*1,2-Butylene oxide	C	III	4m	PV	Restr	A, C	.372, .408, .440, .500, .526, .530(a), (c), (e)–(g), (m)–(o), .1010, .1011.	I–B [18]
(n-) Butyl ether	C	III	B/3	PV	Restr	A, D	.500, .525, .526, .1020	I–C
Butyl methacrylate	D	III	4m	PV	Restr	A, D	.526, .912(a)(1), .1002(a), (b), .1004	I–D
Butyl-methacrylate; Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture.	D	III	4m	PV	Restr	A, C, D	.912(a)(1), .1002(a), (b), .1004	I–D
(n-, crude) Butyraldehyde	B	III	4m	PV	Open	A	.526	I–C
iso-Butyraldehyde	C	III	4m	PV	Open	A	.526	I–C
*Butyric acid	B	III	4m	PV	Restr	A	.238(a), .554	I–D
*Calcium hypochlorite solution (13% or less).	C	III	4m	PV	Restr	NSR	.409	NA
*Calcium hypochlorite solution (more than 13%).	B	III	4m	PV	Restr	NSR	.409	NA

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*Calcium naphthanate in Mineral oil mixture.	A	III	NR	PV	Open	A	.440, .908(a)	NA
#Camphor oil	B	II	4m	PV	Open	B	.409	I-D
#Carbolic oil	A	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020	NA
Carbon disulfide	A	II	B/3	PV	Closed	C	.236(c), .252, 408, .500, .515, .520, .525, .526, .527, .1020, .1040.	I-A
Carbon tetrachloride	B	III	B/3	PV	Closed	NSR	.316, .409, .525, .526, .527, .1020	NA
Cashew nut shell oil (untreated)	D	III	4m	PV	Restr	B	.526, .933	NA
#Caustic potash solution (Potassium hydroxide solution).	C	III	NR	Open	Open	NSR	.236(a), (c), (g), .440, .908(b), .933	NA
Caustic soda solution (Sodium hydroxide solution).	D	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Cetyl-Eicosyl methacrylate	III	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
*Chloroacetic acid (80% or less)	C	II	B/3	PV	Closed	NSR	.236(a), .238(a), .408, .440, .554, .908(b)	I-D
#Chlorobenzene	B	II	4m	PV	Restr	B	.409, .526	I-D
Chloroform	B	III	B/3	PV	Restr	NSR	.525, .526, .527, .1020	NA
(crude Chlorohydrins	D	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-D
*4-Chloro-2-methyl phenoxyacetic acid dimethylamine salt.	C	III	NR	Open	Open	NSR	None	NA
#2- or 3-Chloropropionic acid	C	III	NR	Open	Open	A	.238(a), .440, .554, .908(b)	NA
Chlorosulfonic acid	C	I	B/3	PV	Closed	NSR	.408, .525, .526, .527, .554, .555, .602, .933, .1000, .1020, .1045.	I-B [11]
o-Chlorotoluene	A	III	4m	PV	Restr	B, C	.526	I-D
m-Chlorotoluene	B	III	4m	PV	Restr	B, C	.526	I-D
#p-Chlorotoluene	B	II	4m	PV	Restr	B, C	.409, .440, .526, .908(b)	I-D
*Chlorotoluenes (mixed isomers)	A	II	4m	PV	Restr	B, C	.409, .440, .526, .908(b)	I-D
*Coal tar	A	II	4m	PV	Restr	B,D	.409	I-D [15]
#Coal tar naphtha solvent	B	III	4m	PV	Restr	A, D	.526	I-D
*Coal tar pitch (molten)	D	III	4m	PV	Restr	B, D	.409	I-D [15]
#Creosote (wood)	A	II	NR	Open	Open	B, D	.409	NA
#Creosote (coal tar)	C	III	NR	Open	Open	B, D	.409	I-D
#Cresols	A	II	NR	Open	Open	B	.409, .440, .908(b)	I-D
Cresylate spent caustic (mixtures of Cresols and Caustic sods solutions.		III	NR	Open	Open	NSR	.236(a), (c), .933	NA
Crotonaldehyde	B	II	B/3	PV	Restr	A	.316, .525, .526, .527, .1020	I-C
*Cumene	B	III	4m	PV	Restr	A	.409	I-D
*Cyclohexane	C	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
*Cyclohexanol	C	III	NR	Open	Open	A	.440, .908(a)	I-D
Cyclohexanone	D	III	4m	PV	Restr	A	.236(a), (b), .526	I-D
Cyclohexylamine	C	III	4m	PV	Restr	A, D	.236(a), (b), (c), (g), .526	I-D
*p-Cymene	C	III	4m	PV	Restr	A	.409	I-D
*Decene	B	III	4m	PV	Restr	A	.409	I-D
#(iso-, n-) Decyl acrylate	A	II	NR	Open	Open	A, C, D	.236(a), (b), (c), .409, .912(a)(1), .1002(a), (b), .1004.	I-D [15]
*Decyl alcohol (all isomers)	B	III	NR	Open	Open	A	.440, .908(b)	I-D
#Diammonium salt of Zinc ethylenediamine tetraacetic acid solution [12].		III	NR	Open	Open	NSR	.236(a), .238(a)	I-B
Dibutylamine	C	III	4m	PV	Restr	B, D	.236(b),(c), .526	I-C
*Dibutyl phthalate	A	III	NR	Open	Open	A	.409	I-D
#o-Dichlorobenzene	B	IIII	4m	PV	Restr	B, D	.236(a),(b), .409, 526	I-D
1,1-Dichloroethane	B	III	4m	PV	Restr	B	.526, .527	I-D
#2,2'-Dichloroethylether	B	II	4m	PV	Restr	A	.236(a), (b), .526	I-C [15]
2,2'-Dichloroisopropyl ether	C	II	B/3	PV	Restr	B, C, D	.236(a), (b), .316, .408(a), 440, .525, .526, .1020.	I-D
#Dichloromethane	D	III	4m	PV	Restr	NSR	.526	I-D [15]
#2,4-Dichlorophenol [14]	A	II	4m	PV	Restr	B, C, D	.236(a), (b), (c), (g), .409, .440, .500, .501, .526, .908(b), .933.	I-D [15]
*2,4-Dichlorophenoxy-acetic acid, diethanolamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
*2,4-Dichlorophenoxy-acetic acid, dimethylamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
*2,4-Dicholrophenoxy-acetic acid, triisopropanolamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
1,1-, 1,2-, or 1,3-Dichloropropane	B	II	B/3	PV	Restr	B	.525, .526, .1020	I-D
1,3-Dichloropropene	B	II	B/3	PV	Closed	B	.316, .336, .408, .525, .526, .527, .1020	I-D
#Dichloropropene Dichloropropane mixtures.	B	II	B/3	PV	Closed	B, C, D	.316, .336, .408, .526, .527	I-D
2,2-Dichloropropionic acid	D	III	4m	PV	Restr	A	.236(a), .238(a), .266, .500, 501, .554	NA
Diethanolamine	III	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylamine	C	III	B/3	PV	Restr	A	.236(a), (b), (c), (g), .525, .526, .527, .1020	I-C
*Diethylbenzene	C	III	4m	PV	Restr	A	.409	I-D
*Diethylene gyicol methyl ether	C	III	NR	Open	Open	A	None	I-C
Diethylenetriamine	D	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylethanolamine	C	III	4m	PV	Restr	A, D	.236(a), (b), (c), (g), .526	I-C
*Di-(2-ethylhexyl) phosphoric acid	C	III	NR	Open	Open	B, C, D	.236(b), (c)	I-D
*Diethyl phthalate	C	III	NR	Open	Open	A	None	I-D
#Diethyl sulfate	B	II	4m	PV	Closed	A, D	.236(a), (c), (d), .526	I-D [15]
*Diglycidyl ether of Bisphenol A	B	III	NR	Open	Open	A	.440, .908(b)	NA
Diisobutylamine	C	II	4m	PV	Restr	B, D	.236(a), (b), (c), (g), .409, .525(a) (c), (d), (e), .526, .1020.	I-C
*Diisobutylene	B	III	4m	PV	Restr	A	.409	I-D
*Diisobutyl phthalate	B	III	NR	Open	Open	A	.440, .908(a)	I-D
#Diisopropanolamine	C	III	NR	Open	Open	A	.236b), (c), .440, .908(a)	I-D [15]
Diisopropylamine	C	II	B/3	PV	Closed	A	.236(b), (c), .408, .525, .526, .527, .1020	I-C
*Diisopropyl benzene (all isomers)	A	II	NR	Open	Open	A	.409	I-D
*Dimethyl acetamide	D	III	B/3	PV	Restr	B	.236(b), .316, .525, .526, .527, .1020	I-D [15]
#Dimethylamine solution (45% or less).	C	III	B/3	PV	Restr	C, D	.236(a), (b), (c), (g), .525, .526, .527, .1020	I-C

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*Dimethylamine solution (over 45% but not over 55%).	C	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-C
*Dimethylamine solution (over 55% but not over 65%).	C	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .1020.	I-C
*N,N-Dimethylcyclo hexylamine	C	II	B/3	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .525, .526, .527, .1020.	NA
Dimethylethanolamine	D	III	4m	PV	Restr	A, D	.236(b) (c), .526	I-C
Dimethylformamide	D	III	4m	PV	Restr	A, D	.236(b), .526	I-D
*Dimethyl hydrogen phosphite		III	4m	PV	Restr	A, D	.526	NA
*Dimethyl phthalate	C	III	NR	Open	Open	A	None	I-D
*Dinitrotoluene (molten)	B	II	B/3	PV	Closed	A	.316, .408, .440, .525, .526, .527, .908(a), .1020.	I-C
1,4-Dioxane	D	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-C
*Dipentene	C	III	4m	PV	Restr	A	.409	I-D
*Diphenyl	A	II	NR	Open	Open	B	.409	I-D [15]
*Diphenyl/Diphenyl oxide mixtures	A	II	NR	Open	Open	B	.409	I-D [15]
*Diphenyl ether	A	III	NR	Open	Open	A	.440, .908(b)	I-D
#Diphenyl methane diisocyanate [13]	B	II	B/3	PV	Closed	C, D	.236(a), (b), .316, .440, .500, .501, .525, .526, .602, .908(a), .1000, .1020	NA
*Diphenyl oxide, Diphenyl phenyl ether mixtures.	A	III	NR	Open	Open	B	None	NA
Di-n-propylamine	C	III	4m	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020	I-C
*Dodecanol (Dodecyl alcohol)	B	III	NR	Open	Open	A	.440, .908(a)	I-D
*Dodecene (all isomers)	B	III	NR	Open	Open	A	None	I-D
*Dodecylbenzene	C	III	NR	Open	Open	A	None	I-D
#Dodecyl diphenyl oxide disulfonate solution.	B	III	NR	Open	Open	NSR	.440, .908(a)	NA
Dodecyl methacrylate	III	III	NR	Open	Open	A, C	.236(b), (c), .912(a)(1), .1004	I-D
Dodecyl-Pentadecyl methacrylate mixture.	III	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
*Dodecyl phenol	A	I	NR	Open	Open	A	.408	I-D
Epichlorohydrin	C	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-C
#Ethanolamine	D	III	NR	Open	Open	A	.236(b), (c), .526	I-D [15]
*2-Ethoxyethyl acetate	C	III	4m	PV	Restr	A	.409	I-C
Ethyl acrylate	B	II	4m	PV	Restr	A	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
*Ethylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .525, .526, .527, .1020	I-D
#Ethylamine solution (72% or less).	C	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525(a), (c), (d), (e), .526, .527, .1020.	I-D
*Ethyl benzene	C	III	4m	PV	Restr	A	.409	I-D
N-Ethylbutylamine	C	III	4m	PV	Restr	A	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
*Ethyl butyrate	C	III	4m	PV	Restr	A		I-D
N-Ethylcyclohexylamine	D	III	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .526	I-C
#Ethylene chlorohydrin	C	II	B/3	PV	Closed	D	.316, .408, .525, .526, .527, .933, .1020	I-D
Ethylene cyanohydrin	D	III	NR	Open	Open	A	None	NA
#Ethylenediamine	C	II	4m	PV	Restr	A	.236(b), (c), .440, .526, .908(b)	I-D
#Ethylene dibromide	B	II	B/3	PV	Closed	NSR	.408, .440, .525, .526, .527, .908(b), .1020	NA
#Ethylene dichloride	B	II	4m	PV	Restr	B	.236(b), .408, .526	I-D
*Ethylene glycol diacetate	C	III	NR	Open	Open	A	.409	I-D [15]
*Ethylene glycol ethyl ether acetate.	C	III	NR	Open	Open	A	None	I-C
*Ethylene oxide (30% or less), Propylene oxide.	D	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .525, .526, .530, .1010, .1011, 1020.	I-B
Ethyl ether (Disthyl ether)	III	II	4m	PV	Closed	A	.236(g), .252, .372, .408, .440, .500, .515, .526, .527.	I-C
#2-Ethylhexyl acrylate	D	III	NR	Open	Open	A	.912(a)(1), .1002(a), (b), .1004	I-D
#2-Ethylhexylamine	B	II	B/3	PV	Restr	A	.236(b), (c), .525, .526, .1020	I-D [15]
Ethylidene norbornene	B	III	B/3	PV	Restr	B, C, D	.236(b), .409, .526	NA
Ethyl methacrylate	D	III	4m	PV	Restr	B, D	.526, .912(a)(1), .1002(a), (b), .1004	I-D
*Ethyl phenol	A	III	NR	Open	Open	B	None	I-D [15]
#2-Ethyl-3-propyl acrolein	B	III	4m	PV	Restr	A	.440, .526, .908(b)	I-C
*Ethyl toluene	B	III	4m	PV	Restr	A	.409	I-D
*Fatty alcohols, C_{12}-C_{20}	B	III	NR	Open	Open	A	.440, .908(a)	NA
#Formaldehyde (50% or more), Methanol mixtures.	—	III	4m	PV	Closed	A	.526, .527	I-B
#Formaldehyde solution (37% to 50%).	C	III	4m	PV	Restr	A	.526, .527	I-B
Formic acid	D	III	4m	PV	Restr	A	.238(b), (c), .526, .527, .554	I-D
*Fumaric adduct of rosin water dispersion.	B	III	NR	Open	Open	NSR	.440, .908(a)	NA
Furfural	C	III	4m	PV	Restr	A	.526	I-C
*Furfuryl alcohol	C	III	NR	Open	Open	A	None	I-C
Glutaraldehyde solution (50% or less).	D	III	NR	Open	Open	NSR	None	NA
*Glycidyl ester of tridecyl acetic acid.	B	III	NR	Open	Open	A	None	NA
*Heptanol (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
*Heptene (mixed isomers)	C	III	4m	PV	Restr	A	.409	I-D
*Heptyl acetate	B	III	NR	Open	Open	A	None	NA
#Hexamethylenediamine solution	C	III	4m	PV	Restr	A	.236(b), (c), .409, .440, .526, .908(b)	I-D
Hexamethyleneimine solution	C	II	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .526	I-C
*Hexene(1-, 2-)	C	III	4m	PV	Restr	A	.409	I-D
*Hexyl acetate	B	III	NR	PV	Restr	A	.409	I-D
Hydrochloric acid	D	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052.	I-B [11]
*Hydrogen peroxide solutions (over 8% but not over 60%).	C	III	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA
*Hydrogen peroxide solutions (over 60% but not over 70%).	C	II	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
2-Hydroxyethyl acrylate	B	II	B/3	PV	Closed	A	.408 .525, .526, .912(a)(1), .933, .1002(a), (b), .1004, .1020.	NA
Isophorone diamine	D	III	4m	PV	Restr	A	.236(b), (c), .526	NA
#Isophorone diisocyanate [13]	B	III	B/3	PV	Closed	C, D	.236(a), (b), .316, .500, .501 .526, .602, .1000, .1020.	NA
Isoprene	C	III	4m	PV	Restr	B	.372 .440, .912(a)(1), .1002(a) (b), .1004	I-D
*Lactonitrile solution (60% or less)	B	II	B/3	PV	Closed	A, C, D	.316, .336, .408, .525, .526, .527, .1002, .1020, .1035.	I-D [15]
#Maleic anhydride [10]	D	III	4m	PV	Restr	A, C [10]	None	I-D [15]
Mesityl oxide	D	III	4m	PV	Restr	A	.409, .526	I-D
Methacrylic acid	D	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	NA
*Methacrylonitrile	B	II	B/3	PV	Closed	A	.236(a), .316, .408, .525, .526, .527, .912(a)(1), .1002(a), .1004, .1020.	NA
#Methyl acrylate	C	II	4m	PV	Restr	B	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
#Methylamine solution (42% or less).	C	II	B/3	PV	Closed	A,C,D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-D
*Methylamyl acetate	C	III	4m	PV	Restr	A	.409	I-D
*Methylamyl alcohol	C	III	4m	PV	Restr	A	.409	I-D
*Methylamyl ketone	C	III	4m	PV	Restr	A	.409	I-D
*Methyl butyrate	C	III	4m	PV	Restr	A	.409	I-D [15]
Methylene Chloride see Dichloromethane								
2-Methyl-6-ethyl aniline	C	III	NR	Open	Open	B, C, D	None	NA
#2-Methyl-5-ethyl pyridine	B	III	NR	Open	Open	D	.236(b)	I-D
Methyl formate	D	II	B/3	PV	Restr	A	.372, .408, .440, .525, .526, .527, .1020	I-D
*Methyl heptyl ketone	B	III	4m	PV	Restr	A	.409	I-D [15]
#2-Methyl-2-hydroxy-3-butyne	III	III	4m	PV	Restr	A, C, D	.236(b), (d), (f), (g), .409, .526	I-D
Methyl methacrylate	D	II	4m	PV	Restr	B	.526, .912(a)(1), .1002(a), (b), .1004	I-D
*2-Methyl-1-pentene	C	II	4m	PV	Restr	A	.409	I-D
#2-Methyl pyridine	B	II	B/3	PV	Closed	A, C	.236(b), .408, .525(a), (c), (d), (e), .1020	I-D
*4-Methyl pyridine	B	II	B/3	PV	Closed	A, C, D	.236(b), .408, .440, .525(a), (c), (d), (e), .526, .908(b), .1020.	I-D
*N-Methyl-2-pyrrolidone	B	III	NR	Open	Open	A	None	I-D
*Methyl salicylate	B	III	NR	Open	Open	D	None	I-D
#alpha-Methyl styrene	A	II	4m	PV	Restr	D	.409, .526, .912(a)(1), .1002(a), (b), .1004	I-D
Morpholine	D	III	4m	PV	Restr	A	.236(b), (c)	I-C
Motor fuel anti-knock compounds (containing lead alkyls).	A	II	B/3	PV	Closed	B, C	.252, .316, .336, .408, .525, .526, .527, .933, .1020, .1025.	I-D
#Naphthalene (molten)	A	II	4m	PV	Restr	A, D	.409, .440, .908(b)	I-D [15]
*Neodecanoic acid	B	III	NR	Open	Open	A	None	NA
*Nitrating acid (mixture of Sulfuric and Nitric acids).	C	II	B/3	PV	Closed	NSR	.316, .408, .526, .527, .554, .555, .556, .559, .933, .1000, .1045.	I-B [11]
Nitric acid (70% or less)	C	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045.	I-B [11]
#Nitrobenzene	B	II	B/3	PV	Closed	D	.316, .336, .408, 440, .525, .526, .908(b), .933,.1020.	I-D
#o-Nitrochlorobenzene	B	II	B/3	PV	Closed	B, C, D	.316, .336, .408, .440, .525, .526, .908(a), .1020.	NA
#o-Nitrophenol (molten)	B	II	B/3	PV	Closed	A, C, D	.440, .525, .526, .908(a), .1020	NA
1- or 2-Nitropropane [10]	D	III	4m	PV	Restr	A [10]	.526	I-C
*Nitropropane (60%), Nitroethane (40%) mixture [10].	D	III	4m	PV	Restr	A [10], C	.236(b) .526	I-C
#(o-, p-) Nitrotoluene	C	II	B/3	PV	Closed	B	.316, .408, .440, .525, .526, .908(b), .1020	I-D [15]
*Nonene	B	III	4m	PV	Restr	A	.409	I-D
*Nonyl alcohol	C	III	NR	Open	Open	A	None	I-D
*Nonyl phenol	A	II	NR	Open	Open	A	.409, .440, .908(a)	I-D
*Octanol (all isomers)	C	III	NR	Open	Open	A	None	I-D
*Octene (all isomers)	B	III	4m	PV	Restr	A	.409	I-D
*Octyl aldehydes	B	III	4m	PV	Restr	A	.409	I-C [15]
*Olefins, straight chain mixture	B	III	4m	PV	Restr	A	.409, .440, .908(a)	NA
#Oleum	C	II	B/3	PV	Closed	NSR	.316, .408, .440, .526, .527, .554, .555, .556, .602, .908(a), .933, .1000, .1045, .1052.	I-B [11]
#Paraldehyde	C	III	4m	PV	Restr	A	.440, .908(b)	I-C
#Pentachloroethane	B	II	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
1,3-Pentadiene	C	III	4m	PV	Restr	B	.526, .912(a)(1), .1002, .1004	I-D
*n-Pentane	C	III	4m	PV	Restr	A	.409	I-D
*Pentene (all isomers)	C	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
Perchloroethylene (1,1,2,2-Tetrachloroethylene).	B	III	4m	PV	Restr	NSR	.526	NA
#Phenol, or solutions with 5% or more Phenol.	B	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020	I-D [15]
*1-Phenyl-l-xylyl ethane	C	III	NR	Open	Open	B	None	NA
Phosphoric acid	D	III	NR	Open	Open	NSR	.554, .555, .558, .1045, .1052	I-B [11]
#Phthalic anhydride (molten)	C	III	4m	PV	Restr	D	.440, .908(b)	I-D [15]
Pinene	A	III	4m	PV	Restr	A	.409	I-D
#Polyethylene polyamines	C	III	NR	Open	Open	A	.236(b), (c), .400, .908(b)	NA
Polymethylene polyphenyl isocyanate [12].	D	II	B/3	PV	Closed	C, D	.238 (a), (b), .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
#Iso-Propanolamine	C	III	NR	Open	Open	A	.236 (b), (c), .440, .526, .908(a)	NA
#n-Propanolamine	C	III	NR	Open	Open	A	.236 (b), (c), .440. .526, .908(b)	NA
Propionaldehyde	D	III	4m	PV	Restr	A	.316, .526, .527	I-C
Propionic acid	D	III	4m	PV	Restr	A	.238(a), .527, .554	I-D
#Propionic anhydride	C	III	4m	PV	Restr	A	.238(a), .526	I-D
*Propionitrile	C	II	B/3	PV	Closed	A, D	.316, .336, .408, .525, .526, .527, .1020	I-D
iso-Propylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .408, .440, .525, .526, .527, .1020.	I-D
n-Propylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .408, .500, .525, .526, .527, .1020.	I-D
*Propylene dimer	C	III	4m	PV	Restr	A	.409	NA

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Propylene oxide	D	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .526, .530, .1010, .1011.	I-B
*Propylene trimer	B	III	4m	PV	Restr	A	.409	I-D
iso-Propyl ether	D	III	4m	PV	Restr	A	.409, .500, .515, .912(a)(1)	I-D
Pyridine	B	III	4m	PV	Restr	A	.236(b)	I-D
*Rosin oil	A	III	NR	Open	Open	A	.908(b)	I-D
*Rosin soap (disproportionated) solution.	B	III	NR	Open	Open	A	None	NA
#Sodium borohydride (15% or less), Sodium hydroxide solution.	C	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(a) .933	NA
Sodium chlorate solution (50% or less).	III	III	NR	Open	Open	NSR	.409, .933, .1065	NA
*Sodium dichromate solution (70% or less).	B	II	B/3	Open	Closed	NSR	.236(b), (c), .408, .525, .933, .1020	NA
*Sodium hydrogen sulfite solution (35% or less).	D	III	NR	Open	Open	NSR	None	NA
#Sodium hydrosulfide solution (45% or less).	B	III	4m	PV	Restr	NSR	.526, .440, .908(b), .933	NA
*Sodium hydrosulfide/Ammonium sulfide solution.	B	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .933, .1002, .1020.	NA
#Sodium hypochlorite solution (15% or less).	C	III	4m	PV	Restr	NSR	.236(a), (b)	NA
#Sodium-2-Mercaptobenzo-thiazol solution.	B	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(b), .933	NA
*Sodium thiocyanate (56% or less)	B	III	NR	Open	Open	NSR	.238(a)	NA
#Styrene	B	III	4m	PV	Open	B	.236(b), .409, .912(a)(1), .1002(a), (b), .1004	I-D
Sulfur (molten)	III	III	NR	Open	Open	NSR	.252, .440, .526, .545	I-C
#Sulfuric acid	C	III	NR	Open	Open	NSR	.440, .554, .555, .556, .602, .908(a), .933, .1000, .1045, .1046, .1052.	I-B [11]
*Tall oil, crude and distilled	A	III	NR	Open	Open	A	.440, .908(a)	NA
*Tall oil, fatty acid (resin acids less than 20%).	C	III	NR	Open	Open	A	None	NA
*Tall oil soap (disproportionated) solution.	B	III	NR	Open	Open	A	.440, .908(a)	NA
1,1,2,2-Tetrachloroethane	B	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	NA
#Tetraethylene-pentamine [13]	D	III	NR	Open	Open	A	.236(b), (c), (g)	I-C [15]
Tetrahydrofuran	D	III	4m	PV	Restr	A, D	.526, .912(a)(2), .1004	I-C
*Tetrahydronaphthalene	C	III	NR	Open	Open	A	None	I-D
Toluene	C	III	4m	PV	Restr	A	.409	I-D
#Toluenediamine	C	II	B/3	PV	Closed	B, C, D	.236(a), (b), (c), (g), .316, .408, .440, .525, .526, .527, .908(b), .933, .1020.	NA
#Toluene diisocyanate [12]	C	II	4m	PV	Closed	C, D	.236(b), .316, .408, .440, .500, .501, .525, .526, .527, .602, .908(b), .1000, .1020.	I-D [15]
#o-Toluidine	C	II	B/3	PV	Closed	A, C	.316, .408, .525, .526, .933, .1020	I-D [15]
*Tributyl phosphate	B	III	NR	Open	Open	A	None	I-D
#1,2,4-Trichlorobenzene	B	II	4m	PV	Restr	C	.409, .440, .526, .908(b)	I-D
1,1,1-Trichloroethane	B	III	NR	Open	Open	A	None	I-D
1,1,2-Trichloroethane	B	III	B/3	PV	Restr	NSR	.526	I-D
Trichloroethylene	B	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	I-D
1,2,3-Trichloropropane	B	II	B/3	PV	Closed	B, C, D	.316, .408, .525, .526, .1020	I-D
*1,1,2-Trichloro-1,2,2-trifluoroethane.	C	III	NR	Open	Open	NSR	None	NA
*Tricresyl (tritolyl) phosphate (less than 1% of ortho isomer).	A	II	NR	Open	Open	A	.409, .440, .908(a)	I-D [15]
#Tricresyl (tritolyl) phosphate (1% or more of the ortho isomer).	A	I	4m	PV	Closed	B	.408, .440, .525(a), (c), (d), (e), .908(a), .1020.	I-D [15]
*Tridecyl benzene	C	III	NR	Open	Open	NSR	None	I-D [15]
#Triethanolamine	D	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I-C [15]
Triethylamine	C	II	B/3	PV	Restr	B	.236(b), (c), .525, .526, .527, .1020	I-C
Triethylbenzene	A	II	NR	Open	Open	A	.409	I-D
#Triethylenetetramine	D	III	NR	Open	Open	A	.236(a), (b), (c)	I-C [15]
*Triethyl phosphite	D	III	B/3	PV	Restr	A, D	.526	NA
Trimethylacetic acid	D	III	4m	PV	Restr	A, C	.238(a), .266, .554	I-D
*1,2,4-Trimethyl benzene	B	III	4m	PV	Restr	A	.409	I-D
Trimethylhexamethylene diamine (2,2,4- and 2,4,4-isomers).	D	III	NR	Open	Open	A, C	.236 (a), (b), (c), (g), .409	NA
#Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers) [12].	B	II	B/3	PV	Closed	A, C [12]	.316, .500, .501, .525, .526, .602, .1000, .1020.	NA
*2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate.	C	III	NR	Open	Open	A	None	I-D
*Trimethyl phosphite	—	III	4m	PV	Restr	A, D	.409, .526, .1000	I-D
*Trixylenyl phosphate	A	I	NR	Open	Open	A	.408, .440, .908(a)	NA
*Turpentine	B	III	4m	PV	Restr	A	.409	I-D
*1-Undecene	B	III	NR	Open	Open	A	None	I-D
*Undecyl alcohol	B	III	NR	Open	Open	A	.440, .908(b)	I-D
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	C	III	4m	PV	Restr	A	.236(b), .526	I-D
iso-Valeraldehyde	C	III	4m	PV	Restr	A	.500, .526	I-C
n-Valeraldehyde	D	III	4m	PV	Restr	A	.500, .526	I-C
Vinyl acetate	C	III	4m	PV	Open	A	.912(a)(1), .1002 (a), (b), .1004	I-C
#Vinyl ethyl ether	C	II	4m	PV	Closed	A	.236(b),(d),(f),(g), .372, .408, .440, .500, .515, .526, .527, .912(a)(1), 1002 (a), (b), .1004.	
Vinylidene chloride	B	II	4m	PV	Restr	B	.236 (a), (b), .372, .440, .550, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	I-D
Vinyl neodecanate	C	III	NR	Open	Open	B	.912(a)(1), .1002 (a), (b), .1004	NA
Vinyl toluene	A	III	4m	PV	Restr	D	.236 (a), (b), (c), (g), 409, .912(a)(1), .1002(a), (b), .1004.	I-D

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*White spirit (low (15-20%) aromatic.	B	II	4m	PV	Restr	A	.409	NA
*Xylene	C	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
#Xylenol	B	III	NR	Open	Open	B	.440, .908(a)	NA

* denotes newly added products.
# denotes products which have had carriage requirements changed or added.
— under Annex II Pollution Category denotes pollution category not yet determined.

Column Heading Footnotes:
[1] The cargo name must be as it appears in this column (see §§ 153.3, 153.900, 153.907).
[2] This column lists the IMO Annex II Pollution Category.
[3] This column lists the type of containment system the cargo must have (see §§ 153.230 through 153.232).
[4] This column lists the height of any vent riser required (see §§ 153.350 and 153.351).
[5] This column lists any vent control valve required (see § 153.355).
[6] This column lists the type of gauging system required (see §§ 153.400 through 153.406).
[7] This column lists the type of fire protection system required. Where more than one system is listed, any listed system may be used. A dry chemical system may not be substituted for either type of foam system unless the dry chemical system is listed as an alternative or the substitution is approved by Commandant (G-MTH) (§ 153.460). The types are as follows:
A is a foam system for water soluble cargoes (polar solvent foam).
B is a foam system for water insoluble cargoes (non-polar solvent foam).
C is a water spray system.
D is a dry chemical system. NSR means there is no special requirement applying the fire protection systems.
[8] This column lists sections that apply to the cargo in addition to the general requirements of this part. The 153 Part number is omitted.
[9] This column lists the electrical hazard class and group used for the cargo when determining requirements for electrical equipment under subchapter J (Electricial engineering) of this chapter.

Footnotes of Specific Cargoes:
[10] Dry chemical extinguishers should not be used on fires involving this cargo since some dry chemicals may react with the cargo and cause an explosion.
[11] The 1-B electrical hazard for acids does not apply to weather deck locations. See 46 CFR Part 111.
[12] Water is effective in extinguishing open air fires but will generate hazardous quantities of gas if put on the cargo in enclosed spaces.
[13] Aluminum is a questionable material of construction with this cargo since pitting and corrosion have been reported. The IMO Chemical Code prohibits aluminum as a material of construction for this cargo.
[14] Some tank pitting has been reported when this cargo is contaminated with water, including moisture in the air. The IMO Chemical Code requires that the vapor space over this cargo be kept dry.
[15] Electrical Hazard Class and Group based upon that which appears in "Classification of Gases, Liquids and Volatile Solids Relative to Explosion-Proof Electrical Equipment", Publication NMAB 353-5, National Academy Press, 1982, but not appearing in NFPA 497M, "Manual for Classification of Gases, Liquids and Dusts for Electrical Equipment in Hazardous Classified Locations." See also Subchapter J (Electrical Engineering) of this chapter.

42. By removing and reserving Appendix I and adding Table 2 to follow Table 1 to read as follows:

Table 2—List of Cargoes Not Regulated Under Subchapter D or Under Subchapter O

Ammonium nitrate solution (45% or less)
Ammonium nitrate, Urea solution, 2% or less NH_3
Ammonium phosphate solution
Ammonium phosphate, Urea solution
Ammonium polyphosphate
Ammonium sulfate solution (20% or less)
Apple juice
Calcium bromide solution
Calcium chloride solution
Chlorinated paraffin (C_{14}-C_{17}) with 52% Chlorine
Choline chloride solutions
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution
Ethylene-Vinyl acetate copolymer (emulsion)
Glucose or Dextrose solutions
Glycine, sodium salt solution
Hexamethylene diamine adipate
Kaolin clay slurry
Magnesium chloride solution
Magnesium hydroxide suspensions in water
Milk
Molasses
Pentasodium salt of Diethylene triamine pentaacetic acid solution
Polyaluminum chloride solution
Sodium aluminosilicate slurry
Sodium carbonate solutions
Sodium silicate solution
Sorbitol solution
Tetrasodium salt of Ethylene diamine tetraacetic acid solution
Trisodium salt of N-Hydroxyethyl ethylenediamine triacetic acid solution
Urea solution
Water

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

43. The authority citation for Part 172 continues to read as follows:

Authority: 46 U.S.C. 2101, 2104, 3301, 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d); 50 U.S.C. 198; 49 CFR 1.46.

44. By revising § 172.130(a) to read as follows:

§ 172.130 Calculations.

(a) Except as provided in § 153.7 of this chapter, each tankship must be shown by design calculations to meet the survival conditions in § 172.150 in each condition of loading and operation assuming the damage specified in § 172.133 for the hull type prescribed in Part 153 of this chapter.

* * * * *

45. By revising the introductory text of paragraph (b) and paragraph (d) of § 172.133 to read as follows:

§ 172.133 Character of damage.

* * * * *

(b) Except as provided in § 153.7 of this chapter, if a type II hull is required, design calculations must show that a vessel—

* * * * *

(d) A vessel described in paragraph (b)(2) or (c)(1) of this section need not be designed to survive damage to a main transverse watertight bulkhead bounding an aft machinery space. Except as provided in § 153.7 of this chapter, the machinery space must be calculated as a single floodable compartment.

Dated: September 17, 1986.

W.J. Ecker,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

BILLING CODE 4910-14-M

Appendix

FORM APPROVED
OMB

U.S. Department
of Transportation
United States
Coast Guard

CARGO RECORD BOOK

FOR

SHIPS CARRYING NOXIOUS LIQUID SUBSTANCES IN BULK

NAME OF SHIP: _____

DISTINCTIVE NUMBER
OR LETTERS (CALL SIGN) _____

GROSS TONNAGE: _____

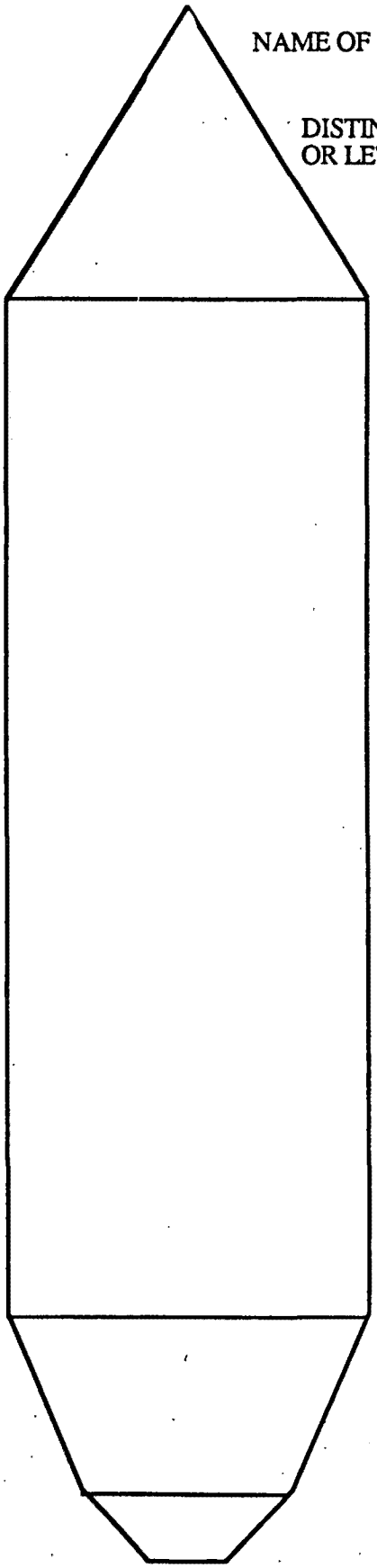
PERIOD FROM: _____ TO: _____

NOTE: Every ship carrying noxious liquid substances in bulk shall have a Cargo Record Book to record relevant cargo/ballast operations. Each Owner/Operator is responsible to maintain and surrender this Cargo Record Book in accordance with MARPOL 73/78, ANNEX II, REGULATION 9 and Title 46 Code of Federal Regulations 153.909.

OBTAINING A CARGO RECORD BOOK

Copies of the Cargo Record Book for Ships Carrying Noxious Liquid Substances in Bulk may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. When ordering refer to serial number: SN.....

Dept. of Transp., USCG, CG-4602B (7/86) SN .....



NAME OF SHIP: _____

DISTINCTIVE NUMBER OR LETTERS: *(Call Sign)* _____

PLAN VIEW OF CARGO AND SLOP TANKS

IDENTIFICATION OF THE TANKS	CAPACITY

GIVE THE CAPACITY OF EACH TANK IN CUBIC METERS
CONVERSION: 1 CUBIC METER = 261.3 GALLONS

If necessary continue on next page

IDENTIFICATION OF THE TANKS	CAPACITY	IDENTIFICATION OF THE TANKS	CAPACITY

GIVE THE CAPACITY OF EACH TANK IN CUBIC METERS
CONVERSION: 1 CUBIC METER = 261.3 GALLONS

BILLING CODE 4910-14-C

Introduction

The Operator or Person In Charge of a vessel shall maintain herein a comprehensive record of cargo, ballast, and prewash operations on a tank-to-tank basis in accordance with paragraph 2 of Regulation 9 of Annex II of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78). Major operations have been grouped into sections, each of which is denoted by a letter.

The Officer or Officers In Charge of an operation, when making entries in the Cargo Record Book, shall insert in the appropriate columns the date, operational code and item number and any required particulars shall be recorded chronologically in the blank spaces provided.

Each Officer or Officers In Charge and each government authorized surveyor, if applicable, upon the completion of the above mentioned entries in this book shall date and sign each entry. Each master shall at the completion of every page sign his name attesting to the validity of the information contained therein.

Entries in the Cargo Record Book are required only for operations involving Categories A, B, C and D substances.

The Operator or Person In Charge of the vessel shall retain this Cargo Record Book on the vessel for a period of not less than 3 years from the date of the last entry.

List of Items To Be Recorded

Entries are required only for operations involving Categories A, B, C and D substances.

(A) Loading of Cargo:
1. Place of loading.
2. Identify tank(s), name of substance(s), category(ies) and quantity(ies) (*cubic meters*).

(B) Internal Transfer of Cargo:
3. Name and category of cargo(es) transferred.
4. Identity of tanks.
   .1 From:
   .2 To:
5. Was (were) tank(s) in 4.1 emptied?
6. If not, quantity remaining in tank(s) (*cubic meters*).

(C) Unloading of Cargo:
7. Place of unloading.
8. Identity of tank(s) unloaded, temperature of cargo(es) during unloading.
9. Was (were) tank(s) emptied?
   .1 If yes, confirm that the procedure for emptying and stripping has been performed in accordance with the ship's Procedures and Arrangements Manual (i.e., list, trim, stripping temperature).
   .2 If not, quantity remaining in tank(s) (*cubic meters*).
10. Does the ship's Procedures and Arrangements Manual require a prewash with subsequent disposal to reception facilities?
11. Failure of pumping and/or stripping system.
   .1 Time and nature of failure.
   .2 Reasons for failure.
   .3 Time when system was made operational.

(D) Mandatory Prewash in Accordance With the Ship's Procedures and Arrangements Manual:
12. Identify tank(s), substance(s) and category(ies).
13. Washing method:
   .1 Number of washing machines per tank.
   .2 Duration of wash/washing cycles.
   .3 Hot/cold wash.
14. Prewash slops transferred to:
   .1 Reception facility in unloading port (identify facility and port).
   .2 Reception facility otherwise (identify facility and port).

(E) Cleaning of Cargo Tanks Except Mandatory Prewash (Other Prewash Operations, Final Wash, Ventilation, etc.):
15. State time, identify tank(s), substance(s) and category(ies) and state:
   .1 Washing procedure used.
   .2 Cleaning Agent(s) (identify agent(s) and quantities).
   .3 Dilution of cargo residues with water, state how much water used (only Category D substances).
   .4 Ventilation procedure used (state number of fans used, duration of ventilation).
16. Tank washings transferred:
   .1 Into the sea.
   .2 To reception facility (identify port).
   .3 Slop tank (identify tank).

(F) Discharge Into the Sea of Tank Washings:
17. Identify tank(s).
   .1 Were tank washings discharged during cleaning of tank(s), if so, at what rate?
   .2 Were tank washing(s) discharged from a slops collecting tank. If so, state quantity and rate of discharge.
18. Time commenced and stopped pumping.
19. Ship's speed during discharge.

(G) Ballasting of Cargo Tanks:
20. Identity of tank(s) ballasted.
21. Time at start of ballasting.

(H) Discharge of Ballast Water From Cargo Tanks:
22. Identity of tank(s).
23. Discharge of ballast:
   .1 Into the sea.
   .2 To reception facilities (identify facility and port).
24. Time commenced and stopped ballast discharge.
25. Ship's speed during discharge.

(I) Accidental or Other Exceptional Discharge:
26. Time of occurrence.
27. Approximate quantity, substance(s) and category(ies).
28. Circumstances of discharge or escape and general remarks.

(J) Control by Authorized Surveyor:
29. Identify facility and port.
30. Identify tank(s), substance(s), category(ies) discharged ashore.
31. Have tank(s), pump(s), and piping system(s) been emptied?
32. Has a prewash in accordance with the ship's Procedures and Arrangements Manual been performed?
33. Have tank washings resulting from the prewash been discharged ashore and is the tank empty?
34. An exemption has been granted from mandatory prewash.
35. Reasons for exemption.
36. Name and signature of authorized surveyor.
37. Organization, company, government agency for which survyeor works. (Address, Phone number, Telex).

(K) Additional Operational Procedures and Remarks:

(i.e., NLS residue or NLS cargo is transferred from cargo pumproom bilges or transferred to an incinerator; a waiver is issued to the ship, shipowner, ship operator, or person in charge of the ship under this part; the concentration of a Category A NLS residue is measured under 46 CFR 153.1120(a); or any discharge recording equipment required by 46 CFR 153.481(b)(2) fails.)

BILLING CODE 4910-14-M

NAME OF SHIP: M/V HELEN PURTILL

DISTINCTIVE NUMBER OR LETTERS: *(Call Sign)*: MRCS

CARGO/BALLAST OPERATIONS

DATE	CODE (letter)	ITEM (number)	Record of operations/signature of officer in charge/name and signature of authorized surveyor
3/8/85	C	7	BUFFALO, N.Y. CHEVRON
		8	NO. 5 PORT, 15°C
		9	YES, DAW REA MANUAL
		10	YES
	D	12	NO. 5 PORT, NONYL PHENOL
		13.1	2
		13.2	3, MIN 13
		13.3	COLD
		14	CHEVRON, BUFFALO, N.Y.
3/9/85	A	1	CHEVRON, BUFFALO, N.Y.
		2	NO. 5, CARGILL OIL, A, 200 M³
			Joseph Patrick 3/9/85

Signature of Master Kay Seaman

NAME OF SHIP: _____

DISTINCTIVE NUMBER OR LETTERS *(Call Sign)*: _____

CARGO/BALLAST OPERATIONS

DATE	CODE (letter)	ITEM (number)	Record of operations/signature of officer in charge/name and signature of authorized surveyor

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Part III

Securities and Exchange Commission

17 CFR Parts 230, 270 and 274

Advertising by Investment Companies; Proposed Rules and Amendments to Rules, Forms and Guidelines

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 270 and 274

[Release Nos. 33-6660; IC-15315; File No. S7-23-86]

Advertising by Investment Companies; Proposed Rules and Amendments to Rules, Forms, and Guidelines

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and amendments to rules, forms, and guidelines.

SUMMARY: The Commission is proposing for public comment new rules and amendments to several rules and forms under the Securities Act of 1933 and Investment Company Act of 1940 affecting the advertising of mutual funds and insurance company separate accounts offering variable annuity contracts. The proposals would: (1) Standardize the computation of mutual fund performance data in advertisements and sales literature; (2) require certain risk and other disclosures in this sales material; (3) eliminate the requirement to file sales material with the Commission if it is filed with the National Association of Securities Dealers; and (4) clarify that investment companies must maintain sales material for inspection by Commission staff. The proposals would enhance prospective investors' ability to compare and evaluate investment company performance claims while reducing investment company filing obligations.

DATE: Comments on the proposals should be received on or before December 22, 1986.

ADDRESS: Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-23-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Thomas S. Harman, Special Counsel, (202) 272-2107, or Robert E. Plaze, Attorney, (202) 272-7309, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is publishing for comment:

(1) Amendments to rule 482 [17 CFR 230.482] under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a *et seq.*] and Forms N-1A, N-3, and N-4 [17 CFR 274.11A, 274.11b, and 274.11c] to limit the performance data advertised by certain open-end management investment companies,[1] known as "income funds," to a uniformly calculated yield quotation accompanied by uniformly calculated total shareholder return quotations covering the five most recently completed calendar years and any subsequent interim period. The amendments would limit the advertisement of performace data of other funds (except money market funds) to uniformly calculated total shareholder return quotations covering the same periods.

(2) Amendments to rule 482 to: (i) Require fund advertisements ("ads") containing performance data to explain the historical nature of the data and emphasize the risks of principal and income fluctuations, and (ii) preclude funds from including purchase applications in rule 482 ads. The addition and amendment of notes to the rule would remind issuers, underwriters, and dealers sponsoring ads of their responsibilities in connection with Rule 482 ads under the federal securities laws.

(3) Amendments to Forms N-1A, N-3, and N-4 under the 1933 Act and Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("1940 Act") to change the format of prospectus disclosure of performance data. Specifically, the amendments would require a fund to include in its prospectus a brief description of how performance used in advertising is calculated and to provide an example and detailed explanation in the Statement of Additional Information ("SAI"). Additionally, an exhibit requirement would be added to the registration statement which would allow the Commission staff to examine performance calculations.

(4) New rule 24b-3 under the 1940 Act and amendments to rules 424 and 497 under the 1933 Act [17 CFR 230.424 and 230.497] to relieve investment companies of their obligation to file sales material with the Commission if it is filed with the National Association of Securities Dealers ("NASD"), and an amendment to rule 31a-2 under the 1940 Act [17 CFR 270.31a-2] to clarify that investment companies must maintain sales material for inspection by the Commission.

(5) New rule 34b-1 under the 1940 Act to make the uniform performance calculations and disclosure requirements of rule 482 applicable to fund sales literature.

The Commission also is publishing related amendments to staff guidelines for the preparation of registration statements on Forms N-1A, N-3, and N-4. Although notice and comment are not required, comments received on changes to the staff guidelines will be considered in developing the final guidelines.

Finally, the release sets forth interpretive positions on several issues relating to fund advertising to provide guidance or address problems concerning appropriate disclosure. *See* footnotes 30, 32, 33, 51, 52, and 55.

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[1] For convenience, the release refers to open-end management investment companies as "investment companies" or "funds."

Appendix I

I. Introduction

1. Background

In 1979 the Commission revised its rules for investment company advertising to permit funds greater freedom in advertising. Investment company advertising, like other securities advertising, is subject to the 1933 Act, which limits public communications offering securities to statutory prospectuses[2] with certain exceptions:

(1) Section 2(10)(a) [15 U.S.C. 77b(10)(a)] excepts from the definition of a prospectus a communication preceded or accompanied by a statutory prospectus. This exception permits issuers to send sales literature with or preceded by a statutory prospectus.

(2) Section 2(10)(b) [15 U.S.C. 77b(10)(b)] and rule 134 [17 CFR 230.134] permit so-called "tombstone" ads.[3]

(3) Section 10(b) [15 U.S.C. 77j(b)] authorizes the Commission to permit prospectuses which omit in part or summarize information in the statutory prospectus.[4]

In the 1979 revisions, the Commission adopted the "omitting prospectus rule" (adopted as rule 434(d), renumbered as rule 482) under section 10(b) of the 1933 Act, to permit fund ads to present more information than allowed in a tombstone ad.[5] Rule 482 does not limit the contents of ads provided that: (i) The substance of any information in the ad is contained in the statutory prospectus, and (ii) the ad states from whom a prospectus can be obtained and advises the investor to read it before investing. In adopting the rule, the Commission stated that permitting funds to disseminate more information in ads would assist investors in evaluating the investment opportunities afforded by funds.[6]

Prior to this liberalization, most fund ads consisted of sales literature distributed with a statutory prospectus. Between 1950 and 1979, the Commission published and maintained a Statement of Policy which set out in detail the staff's view of sales literature which would not be considered misleading.[7] Although the Statement of Policy was intended as a guide, in practice the investment company industry relied on it and it took on the character of a comprehensive and mandatory rule. Because of difficulties administering it, the Commission withdrew the Statement of Policy in 1979,[8] and replaced it with rule 156 [17 CFR 230.156] which states the requirement under the federal securities laws that sales literature not be misleading[9] and provides general guidance on some factors which could make ads misleading.

Although the regulatory framework for investment company advertising established in 1979 in rules 482 and 156 has remained in place, the Commission amended rule 482 in 1980 to require a standardized formula for the yields of money market funds,[10] which then were experiencing tremendous growth as a result of relatively high prevailing interest rates. Because the lack of comparability of money market fund yield quotations could confuse and mislead investors, and because of the significant role which yield quotations were playing in promoting money market funds, the Commission prescribed a yield formula for money market funds.[11] The Commission believes that a uniform standard has facilitated competition among money market funds by enabling investors to compare the performance data of different funds.

2. Current Developments

The popularity of funds, particularly those investing in equities and long-term debt, has increased in recent years,[12] and ads for these funds often prominently display figures indicating their past performance (hereinafter "performance data"). Because no prescribed methods of calculating fund performance exist (except for money market funds), fund ads now use different types of performance data and methods of computation. While many methods are sound, they do not produce data investors can compare, and some methods may distort actual performance.[13]

The Commission is concerned that investors currently cannot compare fund performance claims and may be misled or confused if they do not understand that the quotations being advertised are not uniformly computed. As discussed above, uniform money market fund yields have succeeded in providing investors with information which permits them to compare those funds. The Commission, based on its experience with money market funds, and its concern about advertising practices of other funds, is proposing uniform standards for other types of funds to minimize the possibility of misleading fund performance claims and facilitate meaningful comparisons. This should promote competition among funds and enhance the ability of prospective investors to make informed investment decisions.

The need for uniform standards for income fund performance has been recognized by the investment company industry. In March, 1986, the Investment Company Institute ("ICI"), an industry trade association, submitted a proposal to the Commission's staff ("ICI Proposal") (attached as Appendix I) to standardize yield and distribution quotations of income funds. It would prescribe a mandatory, compounded, annualized, thirty day yield and an optional twelve month current return (distribution) figure for funds whose primary investment objective is the production of current income through investment in debt obligations. A significant feature of the ICI Proposal is that it would prescribe accounting rules for measuring fund income. While this would avoid the variations which now result from reliance on generally accepted accounting principles, it would

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[2] Section 5(c) [15 U.S.C. 77e(c)] makes it unlawful to use any jurisdictional means to offer to sell or offer to buy any security by means of a prospectus or otherwise, unless a registration statement has been filed with respect to such security. Section 2(10) [15 U.S.C. 77b(10)] defines a prospectus to include any writing, including a radio or television advertisement. Section 5(b)(1) of the 1933 Act [15 U.S.C. 77e (b)(1)] prohibits the use of any jurisdictional means to transport a prospectus unless that prospectus meets the requirements of section 10 [15 U.S.C. 77j] of the 1933 Act. Under section 10(a) [15 U.S.C. 77j(a)], prospectuses are required to contain, with certain exceptions, information which section 7 and Schedues A and B of the 1933 Act [15 U.S.C. 77g and 77aa] require to be included in a registration statement.

[3] Tombstone ads are communications limited to announcements identifying the existence of a public offering and the availability of a prospectus. Investment companies may also provide a general description of the investment company and an attention-getting headline, but may not include any performance figure. *See* paragraph (a)(3)(iii) of rule 134.

[4] The Commission has exercised its rulemaking authority to permit summary prospectuses. *See* rule 431 under the Securities Act of 1933 [17 CFR 230.431]. Generally, summary prospectuses must contain the information specified in the instructions to the form the issuer is using.

[5] Investment Company Act Rel. No. 10852 (Aug. 31, 1979) [44 FR 52816 (Sept. 10, 1979)].

[6] *Id.*

[7] The Statement of Policy is reprinted in 5 Fed. Sec. L. Rep. (CCH) ¶ 48,902.

[8] Investment Company Act Rel. No. 10621 (Mar. 6, 1979) [44 FR 16935 (Mar. 20, 1979)].

[9] Investment Company Act Rel. 10915 (Oct. 26, 1979) [44 FR 64070 (Nov. 6, 1979)].

[10] Investment Company Act Rel. No. 11379 (Sept. 30, 1980) [45 FR 67079 (Oct. 9, 1980)].

[11] *Id.* In brief, yield is calculated by dividing the average daily net investment income per share earned by the fund during a seven day period by the fund's average daily price per share over that same period and multiplying the result by 365. In 1983, funds also were permitted to advertise "effective yield" which takes into account the compounding effect of reinvesting fund interest income. Investment Company Act Rel. No. 13658 (Dec. 7, 1983) [48 FR 55722 (Dec. 15, 1983)].

[12] Assets of non-money market funds have grown from $58.4 billion in 1980 to $356 billion by the end of June 1986. Source: Investment Company Institute.

[13] *See infra* note 33 and accompanying text for examples.

require funds to use accounting rules in computing performance which may differ from those funds use for other purposes, including the preparation of publicly available financial statements.

3. Comparison of ICI Proposal With Commission Proposal

The ICI proposal generally addresses only issues related to yield (discussed in Section II, part 3 of this release) and distribution figures, advertised by income funds, and would standardize those performance figures. The Commission proposal would likewise standardize yield, mandate that income funds advertising yield also advertise standardized total shareholder return (discussed in Section II, part 4 of this release), and require equity and other funds that desire to advertise performance figures to use total shareholder return quotations. In addition to the standardization of performance figures, the Commission proposal deals with a number of other advertising/related issues. Specifically, the Commission proposal would: (1) Amend rule 482 to require ads relying on that rule to emphasize the risk of principal and income fluctuations; (2) preclude rule 482 ads from including purchase applications; (3) add a note to rule 482 to clarify the Commission's view that for purposes of the securities laws, a fund ad stands alone; (4) amend rule 482 to require that: (i) Ads which quote several performance figures give equal prominence to each, and (ii) advertised performance data be current, and in no instance more than 30 days old, (5) propose new rule 24b-3 to relieve investment companies from their obligation to file sales literature with the Commission if it is filed with the NASD; (6) amend rule 31a-2 to clarify that investment companies must maintain sales material for inspection; (7) propose new rule 34b-1 to make the uniform performance calculations applicable to fund sales literature; and (8) reallocate and streamline performance data disclosure in the three parts of the registration statement.

With respect to performance figures, the Commission would like to highlight certain differences between its proposal and the ICI Proposal. While the Commission's proposal incorporates a number of features of the ICI Proposal, it would define "income funds" somewhat differently and would not permit income funds to compound earnings in computing yield or to also advertise a figure based on distributions to shareholders. Other differences between the two proposals are discussed below where relevant. The Commission is publishing the ICI Proposal as an exhibit to this release so that commenters may consider it in submitting comments on the Commission's proposal. The Commission is not proposing to adopt the ICI Proposal as an alternative to its own proposal at this time.

II. Standardized Performance data

1. Preliminary Matter

Although the Commission is proposing to standardize yield quotations of income funds, it also seeks comment on whether income funds should be permitted to continue to advertise any yield. A fund yield is a historical figure typically computed by dividing net investment income per share during a recent short period (between 7 and 30 days) by a public offering price and annualizing the result. It does not measure changes in the value of principal.

Using a short-term yield quotation to advertise the performance of a fund holding long-term investments is a recent development. Traditionally, fund performance was shown over a minimum of a one-year period and often over a five to ten year period which demonstrated: (1) Fund performance during different phases of a business cycle, (ii) volatility, and (iii) provided a basis for comparing funds.

The Commission is concerned that presentation of yield in fund ads may create an improper inference that investors can expect to receive this rate of return in the future, and that investors will confuse "yields" advertised by issuers of bonds and certificates of deposit with "yields" advertised by funds. While the yield of a bond or a certificate of deposit represents a promised (and legally enforceable) rate of return, the yield of a fund does not, but rather is merely a depiction of a historical rate of earnings. The Commission is concerned tha marketing funds based on yield may result in investors being confused about the meaning of a fund yield or not appreciating the principal risks in an investment in a fund. The Commission asks commenters to address these concerns and to consider whether funds should be prohibited from advertising yield or should be required to use a term such as "current income rate" rather than yield.

The specific rule proposals would address these issues in part by requiring disclosure in the ad about the meaning of fund yield and the risk of principal inherent in a fund investment and by requiring total return quotations covering each of the past five calendar years, which would demonstrate changes in principal as well as income earned. The Commission requests comment on whether the alternatives described above— prohibiting yield or using a different term—or some other alternative would be cost effective or necessary to prevent investors from being misled by income fund performance claims.

The Commission also seeks comment on the effect of the proposals on competition between funds and other institutions, such as banks, that offer financial products marketed on the basis of their rate of return, but which may not be subject to the same standards. Comparability in advertisements of competing products is an important goal which the Commission wishes to support wherever possible, although the Commission would not reduce needed investor protection standards merely to conform to standards in other industries.

2. Funds Permitted to Advertise Yield

Under the proposed amendments to rule 482, only "income funds" could advertise current yield. A fund would be an income fund within the meaning of the rule if it: (1) Has as its principal investment objective the production of current income primarily through investment in debt obligations and (2) has a dollar-weighted average of at least 95 percent of its net assets invested in debt obligations during the measuring period.[14] The purpose of these conditions is to limit yield advertising to funds with the investment objective of producing the income measured by the yield.[15] Investment companies accrue income from debt obligations regardless of when interest is actually received, which tends to distribute income evenly among thirty-day periods, but typically take dividends into income only when they are distributed by the issuing company. Because dividend distribution tends to cluster around calendar quarters, permitting funds which receive large amounts of dividend income to

[14] A fund owning rights under or contingent obligations with respect to option or futures contracts would exclude these contracts from a determination of whether it meets the 95% test.

[15] This criteria is based on the ICI Proposal but omits funds whose principal investment objective is the production of income from writing options on equity securities. These funds were apparently included in the ICI Proposal with the expectation that they would also advertise a "current distribution" figure which is a measurement of actual distributions (including option income and other short-term capital gains) to shareholders during a 12-month period. The Commission has decided not to propose use of this type of performance figure because it believes that an option income fund can better inform investors of performance by advertising total return, which will demonstrate the effect of option writing on both income and principal.

quote an annualized yield based on income received in one thirty-day period would produce figures which could be unrepresentatively high or low and could not meaningfully be compared to yields of other income funds. To avoid this problem, the proposal would limit use of yield quotations to income funds holding only a *de minimis* amount of equity securities.

3. The Yield Formula

The proposed yield formula, which is based in large part on the ICI Proposal, would compute yield by dividing a fund's net investment income per share [16] during a thirty-day (or one month) period by the maximum offering price on the last day of the period.[17] The base period is patterned after the ICI Proposal.[18] It is a relatively short period which would not extend so far back in time from the date of the advertisement as to include returns which are not characteristic of a fund's current portfolio. Funds would be able to use either a thirty-day or one-month period because some funds may find one or the other period more convenient, depending, in part, upon whether their portfolio instruments pay income on a monthly basis. The Commission requests comments on whether permitting a choice between the use of a thirty-day and a one-month period might have a material effect on yield and whether it would be advisable to select one or the other.

Under the proposed formula, the base period yield figure would be annualized but not compounded. The Commission believes that an uncompounded yield may be relevant to those investors who anticipate receiving the income from their investment in the form of periodically paid dividends. These dividends would not have an opportunity to compound. While other income fund investors may select the divident reinvestment options offered by most funds, their goal likely is the growth of the total value of their investment, *i.e.*, both income and capital. Total return, which measures changes in value over time and assumes reinvestment of all distributions, reflects a compounding of earnings.[19] By presenting an uncompounded annualized yield and a total shareholder return which includes compounded earnings, income fund ads would provide information for both types of investors.

a. Accounting Rules

The proposal follows the approach suggested by the ICI in prescribing uniform accounting rules to compute net investment income. Variation in fund yield quotations can occur because generally accepted accounting principles provide for no single obligatory method of accounting for premium or discount of debt obligations or accrued expenses in determining net investment income. By prescribing accounting rules solely for use in computing advertised yields,[20] the proposal should result in two funds with similar portfolios and expenses quoting similar yields, even if their distribution and accounting practices differ. The Commission's proposal would use the accounting principles suggested by the ICI, with modifications discussed below. The Commission invites comment on whether other accounting principles should be used instead of those proposed.

The proposal would require a fund which purchases an obligation at a premium or discount to adjust, by using the constant yield method of accounting,[21] the income accrued from the obligation to the maturity of the obligation or, if there are call provisions, the next call date on which the obligation may reasonably be expected to be called.[22]

Discount or premium must be amortized into income using the cost of the obligation at purchase ("cost method"), rather than amortizing from the current market value ("market value method") of the obligation. The Commission is proposing to require the cost method because of the complexities involved in applying the market value method to an income fund portfolio which may consist of hundreds of debt obligations.[23] Comment is requested on which method is more appropriate, the effect on the trading markets in discount or premium debt of using either method, and the relative administrative burdens on funds of using either method. Amortization would not be required where a *de minimis* amount of discount is involved.[24] Accrued income for the period would be reduced by accrued expenses including daily charges such as the advisory fee, account charges,[25] and accrued expenses under

[16] Net investment income per share is derived by dividing that net investment income by the average number of shares outstanding for the base period. Those shares would include only shares for which settlement has been made by the last day in the period.

[17] An offering price rather than the net asset value was selected because it better represents the amount invested by the shareholder in order to obtain the income advertised. This is, any charge deducted from payments such as sales load is treated as part of the amount invested. The offering price on the last day of the base period was selected, instead of the average offering price per share, for the base period because the most recent price is likely to result in a yield that more closely approximates the yield to investors who invest shortly after the ad appears.

[18] The ICI asserts this period would be appropriate for all types of funds, including funds which invest in mortgage-backed securities that generally receive income on a monthly basis.

[19] The Commission has prescribed an effective yield formula for money market funds which reflects a compounding of returns. *See* Item 3(c) of Form N-1A. Money market yield is, in effect, a total return quotation. This is because most money market funds entitled to utilize rule 2a-7 under the 1940 Act [17 CFR 270.2a-7] experience minimal or no change in the principal value of a fund share.

[20] The accounting rules are included in the instructions for computing yield contained in proposed Item 22(b)(i) of Form N-1A and Item 25(b)(i) of Form N-3.

[21] The "constant yield method" is a method of discount accretion and premium amortization designed to produce a constant return from acquisition to maturity equal to the rate at acquisition.

[22] *See* proposed Instruction 1(d) to Item 22(b)(i) of Form N-1A and Item 25(b)(i) of Form N-3. The ICI Proposal would use amortization to the next call date in all cases. The Commission believes that amortizing to a reasonable call date is preferable in that bonds may include a number of different call provisions, some of which are unlikely to be exercised. Under the proposal, a fund would amortize until the next call date unless it is unlikely that the obligation will be called on that date. While this may require a fund to change the amortization schedule of an obligation, often the reasonableness of a call date can be deduced from the market price at which the obligation trades.

[23] The cost method can result in two funds with the same portfolios quoting different yields depending upon the price at which the securities were purchased. Using the market value method would prevent this but would require a fund to reassess its amortization schedule for each security in its portfolio for every 30 day period for which it computes yield. For example, if an obligation is issued at a par value of 100 and is purchased by a fund at a discount at 90 (because interest rates rose after the obligation was issued), a portion of the discount would be accreted into income each year. If interest rates then dropped to the level when the obligation was originally issued, the cost method would ignore the change, while the market value method would immediately reflect it and not permit continued accretion for purposes of calculating yield.

[24] The *de minimis* exception is modelled after sections 1273(a)(3) (original issue discount) and 1278(a)(2)(C) (market discount) of the Internal Revenue Code of 1954. Under the exception, if the discount (either market, or original issue, each measured independently) at which a particular instrument is purchased is less than ¼ of 1 percent of the stated redemption price multiplied by the number of years remaining to maturity it may be ignored to avoid affecting income or yield. *See* proposed Instruction 1(a) to Item 22(b)(i) of Form N-1A and Item 25(b)(i) of Form N-3.

[25] *See* proposed Instruction 6 to Item 22(b)(i) of Form N-1A and Item 25(b)(i) of Form N-3. Because the formula would deduct total expenses from total income before computing a per share amount, the total amount of account charges would be used rather than the mean or median account charge used in the money market yield formula and the proposed total return formula.

a plan adopted pursuant to rule 12b–1 under the 1940 Act.[26] Nonrecurring charges such as sales loads or account set-up or redemption fees would not be deducted from investment income.[27] As discussed above, initial sales loads will be reflected by using offering price, rather than net asset value, in the denominator of the computation.

b. Separate Accounts

The proposed yield formula also would be available to separate accounts issuing variable annuity contracts. These separate accounts are organized as management companies which file registration statements on Form N–3 ("management accounts") or unit investment trusts which are funded by a management company and file registration statements on Form N–4 ("trust accounts"). Under the proposal, management accounts operating as income funds would use a yield formula nearly identical to that of income funds.[28] The requirements would be modified for trust accounts because they do not own debt obligations, but rather hold shares of one or more income funds.[29]

The proposal seeks to treat management and trust accounts equally so that a trust account funded by a management company with the same portfolio as a management account, which deducts the same total charges, would quote the same yield. To prevent the portfolio company from timing the income payments to the trust account to increase the yield computation, the portfolio company would be required by proposed Item 21(b)(2) of Form N–4 to declare dividends daily.[30]

c. Tax Equivalent Yield

The proposals would permit funds which invest in tax-exempt debt obligations to advertise a "tax equivalent yield" if they also provide a yield quotation.[31] A tax equivalent yield demonstrates the taxable yield necessary to produce an after tax yield equivalent to that of a fund which invests in tax-exempt debt obligations (and which passes through to its shareholders income exempt from taxation). It would be calculated by dividing the yield of the fund by an income tax rate (or rates) disclosed in the ad.[32]

4. Total Shareholder Return

The proposal would require that all fund ads that present performance quotations (except money market funds) include uniformly computed total shareholder return quotations covering the five most recent calendar years and any subsequent interim period ("five year total shareholder return"). Income funds could present a current yield quotation accompanied by total shareholder return while other funds would be limited to total shareholder return quotations. The requirement for total return quotations is prompted by the Commission's conclusion that standards are necessary to ensure that fund performance ads are not misleading and to permit shareholders to compare fund performance claims. Funds would not be required to present performance data. Rather, the proposals are directed at providing shareholders with necessary information to evaluate the claims of those funds that advertise performance.

Under the proposal, only the standardized performance information could be included in rule 482 ads, although, as discussed below, sales literature could also include any other type of performance information if it is not misleading. Comment is requested on whether, in addition to the standardized total shareholder return and yield quotations, funds should be able to include in a rule 482 ad other performance data if adequately explained and not misleading.

The Commission believes that requiring five year total shareholder return quotations is an effective method of providing comparable data about the performance of mutual funds in a manner which reflects the nature of a mutual fund investment. The total shareholder return formula is based on fund net asset values which are calculated daily, regardless of any advertising requirements. A fund's total return is the sum of all its earnings plus any changes in the value of assets, reduced by all expenses accrued during a measuring period. Because it is not affected by whether investment growth derives from income or capital appreciation or when income is distributed, it does not require complex accounting judgments or rules.

Performance measures such as yield focus on one type of investment return. Accordingly, a fund using yield may be able to advertise a higher yield by engaging in strategies to boost current earnings. For example, a fund may be able to advertise higher yield by purchasing bonds which have relatively high yields but have early call provisions.[33] The potential negative

[26] 17 CFR 270.12b–1. *See* proposed Instruction 5 to Item 22(b)(i) of Form N–1A and Item 25(b)(i) of Form N–3. The ICI Proposal would use expenses "paid" under a rule 12b–1 plan. Because these expenses may be accrued daily but paid on a quarterly or other basis, the Commission's proposal would account for those expenses on an accrual basis. For purposes of computing yield, all funds making payments under a plan adopted pursuant to rule 12b–1 would be required to treat these payments as an expense and accrue the expense ratably during the 30-day period.

[27] However, the calculation of yield must reflect the maximum sales load charged on actual reinvestment of dividends. *See* proposed Instruction 8 to Item 22(b)(i) of Form N–1A.

[28] *See* proposed Item 25(b)(i) of Form N–3.

[29] *See* the last sentence of proposed paragraph (e)(ii) of rule 482 and proposed Item 21(b)(i) of Form N–4. Because trust accounts are invested in equity shares of a management company, the investment objective and investment criteria required to be met in order to advertise a yield quotation would be imposed on the portfolio company rather than the trust account. The trust account receives dividend income from the net investment income of the portfolio company. This net investment income must be calculated in accordance with the proposed accounting rules contained in instructions to the yield calculation in Form N–1A (on which the portfolio company registers). The dividend income would be reduced by recurring charges deducted from the assets of the trust account and contractowner accounts.

[30] Under the proposal, both the trust account and the portfolio company would technically be permitted to advertise performance data. However, the Commission would, under most circumstances, view the advertisement of portfolio company performance to be misleading. This is because such performance would exclude charges at the trust account level; prospective contractowners cannot, in fact, obtain the benefits of the portfolio company performance without the charges incurred at the trust account level.

[31] Proposed Item 22(b)(i)(B) of Form N–1A. This option would apply primarily to municipal bond funds. To advertise a tax equivalent yield the fund would be required to have as its primary investment objective the production of income exempt from federal, state, or local income taxation, and have a dollar-weighted average of 95% of its net assets invested in debt obligations exempt form income taxation during the 30-day base period. *See* proposed paragraph (e)(iii) of rule 482. The 95% test would apply to taxation at each governmental level from whose taxation the yield is advertised as exempt.

[32] If a fund promotes the federal tax-exempt status of the income it distributes in an ad, the ad should also disclose that the income may be subject to state income taxation. If the income is exempt from both federal and state (or local) income tax, the ad should clearly indicate the residents of the state (or locality) to whom the exemption applies and any other information necessary to present a clear understanding of a tax-equivalent yield.

[33] Some funds now advertising performance figures may increase these quotations by selling options which may increase current fund income but may deny the fund the benefit of future capital gains. The proposed yield formula would not permit option income to be included in net investment income. While this proposal is pending, the Commission wishes to emphasize that advertising by funds engaging in these strategies which highlights the relatively higher yields being earned is misleading unless the consequences to the portfolio of the trading strategy used to produce those higher yields are clearly disclosed in the ad. In addition, using options or other trading techniques to increase advertised returns in disregard of future investment performance or in conflict with the investment objectives of the fund may violate the fund managers' fiduciary duties under section 36(a) of the 1940 Act [15 U.S.C. 80a–35(a)].

effect of these strategies on long term principal value will not be demonstrated in the yield calculation and may not be appreciated by investors. The effect on principal value of these strategies will be reflected in the five year total return computations. Unlike an investment in a bond or certificate of deposit, a mutual fund investment represents an investment in a managed pool of securities. Five year total return permits investors to consider the historical accomplishments of management and the change in return from year to year of an investment in the fund. Finally, while performance measures such as yield are appropriate for only certain types of funds, total shareholder return presents useful information about any kind of fund. Because the proposed formula would take into account sales loads and charges paid by the investor, investors could make comparisons between different types of funds, among funds with similar investment objectives, and among funds with different sales load and fee structures. The details of the total shareholder return computations are discussed below.

a. The Measuring Period

Funds advertising performance would be required to present total return quotations for the five most recent calendar years (or the period the fund has been in business, whichever is shorter)[34] and any subsequent interim period. If the fund is an income fund, the last day of the last period must coincide with the last day of the measuring period of any yield quotation.[35] The five-year period represents a compromise between the desirability of providing investors with information on fund performance over an entire business cycle and the practicalities of limited space available in published ads.[36]

The five year period would be divided into calendar, rather than fiscal, years to promote comparability. While funds have different fiscal years, a majority have fiscal years based on calendar years. Presenting total return on a year-by-year basis should demonstrate the fluctuation of fund performance and distinguish recent performance from earlier performance.[37]

b. The Total Shareholder Return Formula

The total shareholder return of a fund is expressed as a ratio of the increase (or decrease) in value of a hypothetical investment in a fund at the end of a measuring period to the amount initially invested. The figure would be computed by: (1) Adding the total number of shares[38] purchased by a hypothetical $1,000 investment in the fund to all additional shares purchased within a one year period with reinvested dividends and distributions, (2) reducing the number of shares by those redeemed to pay account charges, (3) taking the value of those shares owned at the end of the year (the account value) and reducing it by any deferred charges, and then (4) dividing that amount by the initial $1,000 investment. The computation is annualized for any subsequent interim period.[39]

(1) *Front-End Charges.* All charges deducted from payments are reflected by reducing the number of shares purchased at the beginning of the period.[40] Under the proposal, these charges reduce the number of shares purchased for only the first period.[41] For example, if the public offering price is $10 per share with an 8.5 percent sales load, under the formula an initial payment of $1,000 will purchase 100 shares having an initial value of $915.00. The Commission considered excluding nonrecurring charges from the formula and solely relying on legend disclosure to inform prospective investors of the charges. Not all fund investors would have made payments during the five year period and thus would not have been subject to front-end charges. The Commission has decided to include sales charges in the formula to replicate the investment experience of a hypothetical investor who first invested on the first day of the period and would have had to pay sales charges. Moreover, all shareholders would have had to pay the charges at some time. Including sales loads in the formula would also facilitate comparison of funds where shareholders pay distribution expenses through sales loads with funds where shareholders pay distribution expenses under 12b–1 plans.[42]

(2) *Recurring Charges.* All recurring charges diminish the shareholder account value at the end of a period and thus reduce the total shareholder return. These charges generally are those which reduce net asset values,[43] and those which are characterized as account charges and are paid by reducing the number of shares held in the investor's account.[44]

[34] "In business" would be the period during which the fund met the 40% test of section 3(a)(3) of the 1940 Act [15 U.S.C. 80a–3(a)(3)]. However, if a fund commenced operations toward the end of a calendar year such that an annualized total shareholder return for that period would not be a meaningful indication of performance, this period could be ignored.

[35] *See* proposed paragraph (f)(ii) of rule 482. An ad would not contain an interim period if the ad appeared shortly after the beginning of the year.

[36] The Commission considered requiring total return quotations over a 10-year period consistent with the condensed financial information requirements of Part A of Forms N–1A, N–3, and N–4. The 10-year period, which is intended to represent the average length of a business cycle, permits investors to evaluate the performance of a fund under different market conditions. The 5-year period should contain a sufficiently large portion of a business cycle to include falling and rising markets in demonstrating performance.

[37] While alternatives to presenting five or six figures in an ad were considered, they were rejected. An average annual performance calculation could be misleading if recent performance were significantly different. A total return quotation aggregating several years could produce very large figures not comparable with the returns on other financial instruments which are traditionally measured on an annual basis, and would not demonstrate fluctuation or changes in recent performance.

[38] For separate accounts offering variable annuity contracts the formula is stated in terms of accumulation units.

[39] *See* Proposed Instruction 6 to Item 22(b)(ii) of Form N–1A, and proposed Instruction 5 to Item 25(b)(ii) of Form N–3 and Item 21(b)(ii) of Form N–4.

[40] If the fund charges sales loads at varying amounts pursuant to rules 22d–1 or 22d–2 under the 1940 Act [17 CFR 270.22d–1 and 270.22d–2], it must deduct the maximum sales load in determining the amount of shares initially purchased. Proposed Instruction 1 to Item 22(b)(ii) of Form N–1A, Item 25(b)(ii) of Form N–3, and Item 21(b)(ii) of Form N–4.

[41] *See* Proposed Instruction 1 to Item 22(b)(ii) of Form N–1A, and proposed Instruction 5 to Item 25(b)(ii) of Form N–3 and Item 21(b)(ii) of Form N–4.

[42] If the structure or amount of fees, charges, or loads is changed, the fund must recompute the total return for earlier years using the current charges which would have been applicable had they been in effect during each of the earlier years. A charge is not "changed" if it is increased or decreased in accordance with a prearranged schedule, *e.g.*, in accordance with the size or performance of the fund. Proposed Instruction 7 to Item 22(b)(ii) of Form N–1A, and proposed Instruction 6 to Item 25(b)(ii) of Form N–3 and Item 21(b)(ii) of Form N–4.

[43] These charges are accounted for in the proposed formula by the effect they have of reducing the net asset value per share at the end of the period.

[44] These charges are accounted for in the proposed formula by their effect on the number of shares held by the shareholder at the end of the period. If the charges are deducted monthly, for example, a certain number of shares would be redeemed each month to pay for the charges. The number of shares redeemed during a 12 month period would be a function of the amount of the charge and the value of the shares at the time of each monthly redemption. Because account charges are different for each account and depend on the size of the account, the instructions to the formula provide for calculating a hypothetical charge based on a mean or median account size. A fund may select either a mean or median average as long as that selection is used consistently throughout the five calendar year and interim period calculations. (This conforms to the current money market fund yield computation. *See* Investment Company Act

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(3) *Charges Deducted Upon Redemption.* Under the formula, any nonrecurring charges the shareholder would bear upon redemption will reduce the account value at the end of the last period.[45] Where redemption charges or sales loads are reduced gradually over time for shareholders who maintain their investment in a fund or fund complex, the amount of the charge is calculated by assuming that the hypothetical investor redeemed all of the shares on the last day of the last period. While this approach presents the experience of a hypothetical investor over the measuring period, it would result in excluding a contingent deferred sales load payable in the first years of the investment if the load drops to zero by the fifth year. Under the proposal, the existence of this load must be disclosed in the ad.

III. Measuring Portfolio Risks Associated With Investment Companies

While the total shareholder return figure enables investors to compare mutual fund peformance in absolute terms, it—like other performance figures—does not compare one fund's performance against another's on the basis of the amount of risk incurred to obtain that return. Generally, funds with more volatile portfolios obtain, on average, higher returns than those with less risky portfolios because higher risk securities tend to yield higher returns to compensate investors for assuming greater risk.[46] A number of scholars assert that fund management is most appropriately assessed by measuring return in light of the risks assumed to obtain the return,[47] and popular financial publications reporting on fund performance have also attempted to gauge fund risk.[48] By comparing fund returns with those of an unmanaged pool of securities with the same amount of market risk, an investor may determine the value added by fund management.[49]

The Commission believes that comparative risk information could be important to investors in evaluating fund performance. The Commission therefore seeks comment from investors, suppliers of fund data, academicians, members of the mutual fund industry, and other interested persons on how fund ads might incorporate risk-adjusted performance data. Because of the practical limitations associated with advertising, such as cost and space, commenters should focus on how to present information about market risk in a format which could be appreciated and understood by the typical investor.

Commenters should consider:

1. The possibility of adjusting a market index to reflect the historical risk of the fund and including the adjusted index figure next to each of the total return quotations. Investors could then determine whether the fund outperformed the market in securities of comparable risk.

2. Use of the risk-adjusted index to create descriptive terms of risk or a scale of risk which would be included in an ad to describe the degree of portfolio risk. Although these terms or a scale would not inform investors of whether a fund "outperformed the market," they would be easy to understand.

3. How to choose a broad based index, and how to calculate an adjusted index. Whether a specialty fund should also be able to select a narrow as well as a broad-based index to adjust and compare performance.

4. How should portfolio risk be measured over the five years if the portfolio risk of the fund has changed.

5. How to effectively present risk-adjusted information in a rule 482 ad, and what additional legend disclosure, if any, should be required.

6. Whether information about risk more appropriately belongs in the prospectus, a document with more space in which to explain the significance of risk-adjusted performance.

IV. Additional Amendments to Rule 482

The Commission is also proposing various amendments to rule 482, the "omitting prospectus rule," to ensure that investment company ads are not misleading.[50]

1. Required Disclosure

Since liberalizing investment company advertising restrictions, the Commission has observed several problems in fund ads which it believes additional disclosure may resolve. First, prospective investors may not appreciate the distinction between fund performance claims, which present historical data, and yields or returns on other financial instruments. Currently, important disclosures that performance claims are historic and not necessarily indicative of future performance are often relegated to footnotes and very small print or presented in an incomplete or confusing manner. Some ads have failed to include any such disclosure. Also, ads often inadequately disclose the risks associated with an investment in a mutual fund. They may

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Rel. No. 13658, *supra* note 11.) Thus, if a fund were to decide to switch from the mean to the median account size, it would be required to recalculate the past five years' returns using the median account size during each of the respective years.

[45] Redemption charges are generally measured in three ways: (1) As a percentage of the amount redeemed, (2) as a percentage of the amount invested (payments), or (3) as a dollar amount. Some funds have a combination of the three methods. The proposed instructions to the formula require the maximum amounts of each of these types of charges to be added to determine the reduction in the value of the hypothetical account at the end of period. Proposed Instruction 5 to Item 22(b)(ii) of Form N-1A, and proposed Instruction 4 to Item 25(b)(ii) of Form N-1A, and proposed Instruction 4 to Item 25(b)(ii) of Form N-3 and Item 21(b)(ii) of Form N-4. In some cases, whether any of three types of redemption charges will affect the account value at the end of the period will be determined by the performance of the fund during the period. For example, a fund might have a sales load based on 5% of the amount redeemed or purchase payments made, whichever is less. Whichever is less is determined by whether the value of the shareholder account increased or decreased during the period.

[46] Sharpe, *Risk Aversion in the Stock Market: Some Empirical Evidence*, Journal of Finance 416 (May 1975); Sharpe, *Mutual Fund Performance*, 39 Journal of Business 119 (Jan. 1966); McDonald, *Objectives and Performance of Mutual Funds, 1960-1969*, Journal of Financial and Quantitative Analysis 311 (June 1974); Modigliani and Pogue, *An Introduction to Risk and Return*, Financial Analysts Journal, (March/April, May/June 1974); R. Brealey, *An Introduction to Risk and Return From Common Stocks*, Chapt. 4 (1969). These findings have been reexamined recently using the methodology developed to evaluate a manager's ability to time the market and select individual securities. Henriksson and Merton, *On Market Timing and Investment Performance. II. Statistical Procedures for Evaluating Forecasting Skills*, 54 Journal of Business 513 (Oct. 1981). The recent studies found no significant differences with the general findings of the earlier studies. Chang and Lewellen, *Market Timing and Mutual Fund Investment Performance*, 57 Journal of Business 57 (Jan. 1984); Henriksson, *Market Timing and Mutual Fund Performance: An Empirical Investigation*, 57 Journal of Business 73 (Jan. 1984); Jagannathan and Korajczyk, *Assessing the Marketing Timing of Managed Portfolios*, 59 Journal of Business 217 (April 1986).

[47] Treynor, *How to Rate Management of Investment Funds*, 43 Harv. Bus. Rev. 63 (Jan.-Feb. 1965); Jensen, *Risk, the Pricing of Capital Assets, and the Evaluation of Investment Portfolios*, 42 Journal of Business 167 (April 1969); Mains, *Risk, the Pricing of Capital Assets and the Evaluation of Investment Portfolios: Comment*, 50 Journal of Business 371 (July 1977); McDonald, *supra* note 46.

[48] *See* "The World of Funds: How to Find Your Way," Bus. Wk., Feb. 24, 1986, 58-85; "The *Money* Guide to Mutual Funds," Money, May 1986, 202-34; "Find a Fund to Match Your Goals," Changing Times, Sept. 1986, 63-67. *See also Mutual Fund Sourcebook*, Winter 1986 (measures fund risk by degree of variance from U.S. Treasury bill rate); CDA Investment Technologies, Inc., *CDA Mutual Fund Report* and *Cadence Universe Performance Report;* and *Hulbert Financial Digest* (ranks investment newsletters, *inter alia*, by degree of risk of hypothetical portfolios, *see, esp.*, "Risk v. Return," at 1 (Aug. 15, 1985)).

[49] *See* Bank Adminstration Institute, *Measuring The Investment Performance of Pension Funds For The Purpose of Inter-Fund Comparisons* 6 (1968): "A superior fund manager is one who obtains on the average of a high rate of return relative to the degree of risk he has assumed, or is permitted by policy to assume, in his investments."

[50] The Commission is also proposing technical amendments to make paragraph (d) of rule 482 correspond to the proposed new format of the items in Forms N-1A, N-3 and N-4 which prescribe a standardized yield formula for money market funds.

contain "boiler plant" language warning that all investments entail certain risks without explaining the nature of the risks, including the risk of a loss of principal.[51] Secondly, ads with performance figures do not always reveal whether those performance figures reflect any sale loads or other charges.

To address these problems, the Commission proposes to amend rule 482 to require fund ads to include a legend informing prospective investors of the historic nature of the performance data advertised and to explain that the value of the principal amount of an investment in the fund will fluctuate (so that the investment may decline in value).[52] Under the proposed legend requirement, paragraph (a)(6), funds that impose a sales load or other nonrecurring charges must disclose in the ad the maximum amount of these charges, whether the performance data reflects these charges and, if not, that their effect would be to reduce the performance quoted. The proposal would not mandate the use of specific language. Comment is requested on whether a specific mandatory legend would be preferable to provide uniformity and to assure that requested on whether the information that would be disclosed in the legend is sufficient to inform prospective investors of the nature of investment company performance data.

By proposing to include a mandatory legend in fund ads, the Commission is not suggesting that the legend information contains all the material information necessary to prevent an ad from being misleading. Additional disclosure regarding the risks involved in an investment in the particular fund may be required (*see* rule 156). The Commission emphasizes that whoever sponsors the ad, be it the fund, the underwriter, or the dealer, bears the primary responsibility for assuring that the ad is not false or misleading.

Rule 420 under the 1933 Act [17 CFR 230.420] requires all printed prospectuses to be in roman type at least as large as 10-point modern type. Because rule 482 ads constitute "omitting prospectuses," the rule 420 legibility requirements apply. The proposed amendments would add a note to rule 482, after paragraph (a)(6), to restate this requirement.[53]

The ICI Proposal would require legend disclosure to illustrate the fluctuation of share values by requiring funds to present the per share net asset value at the beginning and ending days of a twelve month period.[54] Many funds recently have included this disclosure in their ads. The Commission has decided not to require this legend, because it seems less effective in ensuring that investors understand the risk of principal and income fluctuations than a legend alerting the investor to the possibility of experiencing a loss. If net asset values rise during the twelve month period, including the two net asset values might convey only an impression of good performance rather than fluctuation.[55]

2. Relationship to Prospectus Disclosure

The Commission proposes to add a note to rule 482 stating its view that, for purposes of the antifraud provisions of the federal securities laws, a fund ad stands alone. Disclosure in a section 10(a) prospectus does not cure a false or misleading ad. Therefore, a fund or other publisher of an ad subject to rule 482 must ensure that the ad in and of itself is not false or misleading.

3. Prominence of Performance Quotations

The proposed rule 482 amendments would require that multiple performance figures be given equal prominence in fund ads. This would require money market funds to give equal prominence to yield and effective yield quotations and income funds to give equal prominence to yield and total shareholder return quotations.[56] This requirement would prevent a fund from presenting favorable performance data prominently while "burying" less favorable performance data.

4. Purchase Applications Accompanying Advertisements

Proposed paragraph (a)(5) of rule 482 would codify the staff's position that purchase applications cannot be included in a rule 482 ad.[57] Under rule 482 an ad must include a legend telling investors how to get a prospectus and directing them to read it before investing. The purpose of the legend is to preserve the statutory prospectus as the primary disclosure document by encouraging investors to read the statutory prospectus before investing.[58] The Commission believes that permitting purchase applications [59] to be included in an omitting prospectus ad would undermine the purpose of the legend requirement.[60]

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[51] The Commission is particularly concerned about fund ads promoting investment in a portfolio of "U.S. government guaranteed" securities that create the inference that an investor cannot experience a loss and that the yield advertised is guaranteed. Such an ad is misleading unless it also explains that the value of "guaranteed" securities fluctuates due to changing interest rates (or other market conditions) and that an investor may experience a loss or may, due to prepayment of investments held by the fund, receive back part of his investment before redemption. In addition, these ads should explain that the advertised yield is a historic figure and that it, too, is subject to fluctuation.

[52] Money market funds would be excluded from the legend requirement pertaining to fluctuation of the principal value of an investment because of the relative stability of the value of these funds' assets. Under general antifraud principles, each money market fund must determine whether the disclosure is material given the nature of its assets.

[53] The ICI Proposal provides for risk disclosure "in the predominant type size used in the text," and would permit footnotes to be no smaller than the smaller of 75% of the predominant type size used in the text or 10-point type. The Commission, however, has decided not to propose this modification to the current 10-point type requirement because it is unpersuaded as to the need to revise the current rule and because of the administrative difficulties of determining what constitutes a "footnote" and what is the predominant" type size of a given advertisement.

[54] *See* ICI Proposal, Part IV, attached as Appendix I.

[55] The presentation of total shareholder return quotations will demonstrate five years instead of one year of fluctuations in the return on an investment in the fund. *See supra* section II.4.b. of this release. The ICI Proposal also would require that if the expenses of the fund are voluntarily subsidized, the fact of subsidization be disclosed. The Commission believes that both the fact of subsidization and the return the fund would have obtained had no subsidization occurred must be disclosed. Voluntary subsidization may be withdrawn after the measuring period, and thus a performance figure benefitting from the effect of subsdization would be misleading unless adequate disclosures were made. The Commission is not, however, proposing to incorporate any provision regarding subsidization into rule 482. The obligation to disclose the effects of subsidization is imposed under the antifraud rules.

[56] The proposal would clarify that money market fund yield and effective yield quotations must be derived from the same base period. *See* proposed amendments to paragraph (d) of rule 482.

[57] Federated Investors, Inc. (pub. avail. June 20, 1985).

[58] Investment Company Act Rel. No. 9811 (June 6, 1977) [42 FR 30379 (June 14, 1977)].

[59] The term "application" is not defined inthe rule, but would mean any document which directly or indirectly invites readers to provide their names and other personal information along with a check or money for the purpose of initiating a purchase of the shares of the investment company which is being advertised. A rule 482 ad could include a form for requesting a prospectus, and a purchase application, of course, could be sent to the investor with the prospectus.

[60] This amendment would except certain unit investment trust prospectuses offering periodic payment plan certificates. This exception will primarily affect issuers of variable annuity and variable life insurance contracts. These contracts are often issued by a unit investment trust and provide for alternative allocations of premiums to several management investment companies in which the trust invests. The descriptions of the underlying investment companies in the trust prospectus are considered omitting prospectuses. Without this exception the trust prospectus could not include a purchase application. *See* Investment Company Act Rel. No. 14575 (June 14, 1985) [50 FR 26145 (June 25, 1985)] (adoption of Forms N-3 and N-4 with regard to the delivery of the prospectus of investment companies underlying the unit investment trust).

5. Stale Performance Data

Rule 482 also would be amended to require that advertised performance data be current. The ICI Proposal would require that performance data be as of the most recent practical date considering the type of fund and the medium in which the quotation appears. The Commission proposes to amend rule 482 to incorporate this standard and also require that the data not be more than thirty days old. Using performance data which is more than thirty days old could be misleading because it would not represent recent performance. Although the thirty-day limitation is somewhat arbitrary, the Commission believes a limit is necessary to prevent funds from advertising stale performance data.[61] This proposal would *not* provide a thirty-day safe harbor for performance data. Rather, the primary test would be whether the data is of the most recent practical date given the type of publication and the type of fund.[62] Because the necessary lead time for different media varies, a week old performance quotation for a newspaper might be stale, while a 30-day old performance quotation for a magazine might not be stale. If the lead time for a publication exceeds thirty days, proposed paragraph (g) of rule 482 assumes that such a publication is not an appropriate medium for fund ads containing performance data.

V. Presentation of Performance Data in the Prospectus

1. Allocation and Presentation of Performance Data

The Commission also proposes to revise the manner in which performance data is disclosed in mutual fund prospectuses.[63] Under prospectus simplification requirements adopted by the Commission in recent years, these funds satisfy the prospectus delivery requirements of the 1933 Act by delivering a simplified prospectus with additional information available to investors upon request in the SAI. The amendments would reallocate the information in the simplified prospectus and the SAI [64] and would require: (1) The fund's simplified prospectus to contain a brief explanation of any performance data, if the fund advertises performance data,[65] and (2) the fund's SAI to contain a more detailed explanation and actual performance figure quotations.

Form N-1A, which currently deals only with the performance quotations of money market funds, requires money market funds to include a yield quotation in the prospectus and describe the methodology in the SAI. This yield quotation must be based on a seven-day period ending either on the date of the most recent financial statements included in the prospectus or the last day of a recent month before the prospectus was published. Because this same prospectus may be used for a period exceeding one year, the yield quotation becomes stale and misleading if yield changes substantially. When the Commission standardized money market yields in 1980, it inserted the yield quotation in the prospectus to illustrate the figure that results from the computation, which was required to be described in the prospectus.[66] When the Commission adopted Form N-1A, in 1983, the detailed description of the computation was placed in the SAI.[67] By moving the yield quotation to the SAI, the Commission believes it would serve its original purpose of illustration. Because of the limited purpose the yield quotation would serve, the Commission proposes to limit the seven-day period to a seven-day period ending on the date of the balance sheet included in the registration statement.

On the other hand, the Commission believes that if funds advertise yield and total return quotations, the prospectus should contain a brief explanation of this data. Because the proposal would require only a brief description of the performance data methodology in the prospectus, this revision would not lengthen the simplified prospectus.[68] In addition, Item 24 of Part C of Form N-1A [69] would be amended to require registrants to provide an exhibit setting out the investment company's calculation of its performance data. The exhibit would permit the staff to review these calculations for compliance with the rules discussed in this release.

Requiring a brief explanation of the methods used for calculating performance data also will serve as the basis for including performance data in rule 482 ads. Under rule 482, an "omitting prospectus" must contain only information "the substance of which" is presented in the statutory prospectus.[70] The Commission believes that a rule 482 ad containing performance data includes information "the substance of which" is contained in the prospectus if the performance data is calculated by the method briefly described in the statutory prospectus.[71]

Finally, the Commission proposes to revise the format of the items in Form N-1A pertaining to the standardized yield quotations of money market funds to simplify the instructions and clarify or correct certain technical matters.

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[61] The 30-day period runs until the performance data "is first made available to the public." For newspapers, this most often will be the date of publication; for magazines, it usually will be the first date they appear on newsstands or are delivered to subscribers. Ads which appear on radio or television, or in brochures distributed over a period of time would meet the 30-day test if the ad was initially made public prior to the expiration of the 30-day period, but would still be subject to the "most recent practical date" test, which will require that the performance data be periodically updated. For example, although radio commercials could be updated daily, the expense of doing so could make the updating impractical. Thus, a fund might update performance data weekly. For purposes of the proposed rule provisions, a newspaper publishes a new ad each day an ad is published.

[62] Different funds might need different lead times for ads in the same medium. A fund whose portfolio consists of mortgage-backed securities might not know the mortgage paydowns for a particular month until a week after the end of the month, while a common stock fund would likely be able to calculate its total return immediately after the end of the month.

[63] The amendments apply to open-end investment companies filing on Forms N-1A, N-3, and N-4. References in this part of the release will be to Form N-1A but apply likewise to Forms N-3 and N-4 unless specifically noted.

[64] The disclosure of yield quotations is presently required by Item 3(c) of Form N-1A. The proposed amendments would place this requirement in Item 25.

[65] Currently, Item 3(c) of Form N-1A requires money market funds to provide a yield quotation in the prospectus. Since the principal purposes of the prospectus disclosure are to inform the investor as to the method of calculating yield and provide a basis for the inclusion of a yield quotation in an "omitting prospectus," Form N-1A would be revised so that performance disclosure in the prospectus could be omitted if the fund does not advertise its yield. Forms N-3 and N-4 require disclosure of money market yield information only when yield is advertised. *See* Item 4(c) of Form N-3 and Item 4(b) of Form N-4.

[66] Investment Company Act Rel. No. 11379, *supra* note 10.

[67] Investment Company Act Rel. No. 13420, (Aug. 12, 1983) [48 FR 37928 (Aug. 22, 1983)].

[68] The Commission is publishing a proposed staff guideline to assist registrants in preparing this disclosure.

[69] Part C pertains to other information required in the registration statement but which is neither part of the prospectus nor the SAI.

[70] Rule 482(a)(2).

[71] *See* Investment Company Act Rel. No. 10852, *supra* note 5 (adopting rule 434d(482)), in which the Commission stated that the precise tracking of the language used in the statutory prospectus is not required in a rule 482 ad. In processing registration statements the staff has consistently taken the position that if an advertisement includes yield figures derived by methods discussed in the statutory prospectus, the ad contains the substance of the information contained in the statutory prospectus. Rule 482 would provide that the standardized performance data must be computed as prescribed by the various forms.

These changes would not substantively alter the money market yield formula.[72]

2. Revisions of Omitting Prospectus Advertisements

The Commission proposes to add an instruction to Form N-1A to make clear that funds which revise omitting prospectuses to update performance data need not also amend their statutory prospectuses if the performance data is calculated in a manner consistent with the description in the prospectus. As discussed above, the Commission believes that if the performance data is calculated consistently with its description in the fund's prospectus and Statement of Additional Information, it "contains only the information the substance of which is contained in the [statutory] prospectus" and thus it is not necessary to amend the statutory prospectus when updating performance data.

VI. Sales Literature

The Commission is also proposing a new rule under the 1940 Act to apply the standardized performance and disclosure requirements to all fund sales literature containing performance information.[73] Proposed rule 34b-1 would deem any sales literature[74] containing performance data to be misleading within the meaning of section 34(b) of the 1940 Act [15 U.S.C. 80a-33(b)][75] unless it also includes the appropriate standardized performance data[76] and the legend disclosure proposed to be required in rule 482 ads.

The Commission is extending these requirements to fund sales literature in order to permit prospective investors to compare the performance claims of funds which promote the sales of their shares through use of sales literature.[77] The Commission believes that the same concerns and needs for uniformity apparent in rule 482 ads are present with respect to sales literature.[78] However, the rule would not make the standardized performance data the exclusive performance data in sales literature, because the Commission believes that sales literature is not subject to the same space limitations as a rule 482 ad, so that non-standardized performance data may be accompanied by sufficiently detailed disclosure to explain its significance.[79]

VII. Filling Sales Materials

Section 24(b) of the 1940 Act and rules under the 1933 Act together require investment companies to file text of sales literature with the Commission upon or after their use.[80] These requirements were designed to facilitate enforcement of the antifraud provisions of the securities laws.[81] When the filing requirements were originally adopted, the relatively small number of investment companies were substantially limited in their advertising. The liberalization of advertising restrictions and the growth in the investment company industry[82] have increased significantly the amount of material filed. While the staff periodically spot checks sales literature filed with the Commission,[83] it now is more cost-effective for the Commission to review sales literature during investment company inspections, in connection with investor complaints, and by monitoring print, radio, and television ads.

Most investment company sales literature originates from firms which belong to the NASD. NASD members must file sales literature, including investment company sales literature, for NASD review under the NASD Rules of Fair Practice.[84] The NASD reviews each piece of sales literature it receives for compliance with its rules and the Commission's rules.[85]

The Commission believes that the obligation to file investment company ads both with the Commission and with the NASD imposes an unnecessary burden on investment companies with little corresponding benefit to investors. Therefore, the Commission is proposing a rule and rule amendments to provide that sales material filed with the NASD will be deemed to be filed with the Commission. The Commission is also proposing a rule amendment requiring investment companies to preserve and maintain all of their sales material for inspection.[86] While the Commission

[72] The yield calculations in Forms N-3 and N-4 would be modified so that account charges are deducted from the beginning value of the hypothetical account and before the computation of the base period return so that the yield quotation properly reflects these charges.

[73] The ICI Proposal, which would apply to "any communication (whether in writing, by radio, or television)," also would extend the standardized performance requirement to sales literature. *See* Appendix I.

[74] This would include all material required to be filed with the Commission by section 24(b) of the 1940 Act [15 U.S.C. 80a-249b)], including any supplemental sales literature accompanied or preceded by a prospectus so as to be exempt from the requirements of section 5 of the 1933 Act. It also would include pamphlets or other written sales material sent to dealers and sales personnel with the understanding or intent that the dealers and sales personnel will quote the performance in attempting to sell fund shares. *See* Investment Company Act Rel. No. 150 (June 20, 1941) [11 FR10993 (Sept. 27, 1946)].

[75] Section 34(b) makes it unlawful for any person filing any document required to be filed under the Act or kept under section 31(a) of the Act [15 U.S.C. 80a-30(a)] to omit to state therein any fact necessary in order to prevent the statements made, in light of the circumstances under which they were made, from being materially misleading. Section 24(b) of the 1940 Act requires sales literature to be filed with the Commission, and rule 31a-2 requires it to be kept by the funds's underwriter for a period of at least 6 years.

[76] The proposed rule would require that money market fund sales literature quoting performance data also quote the standardized current and (at its option) effective yield, that an income fund also provide the standardized yield and total return quotations, and that all other funds also provide total return quotations. In addition, the performance data must be as of the most recent practical date, but in no case more than 30 days old. *See* discussion *supra* Part IV.5. of this release.

[77] In addition, uniform performance data would permit prospective investors to compare the performance claims of funds which promote their shares through use of sales literature with those which promote their shares through use of rule 482 ads.

[78] *See* discussion *supra* Part II.4. of this release.

[79] A similar approach was suggested by the ICI Proposal. *See* Appendix I, paragraph II.d.

[80] Section 24(b) requires the filing with the Commission within ten days of use of "any advertisement, pamphlet, circular, form letter or other sales literature" used by all types of investment companies except closed-end companies. Rules 424 and 497 under the 1933 Act, in effect, require rule 482 ads (which are omitting prospectuses) to be filed with the Commission simultaneously with the first use of the advertisement, unless the advertisement is to be broadcast on radio or television, in which case it must be filed five days prior to its first broadcast.

[81] Investment Company Act Rel. No., 150, *supra* note 74.

[82] At the time the Investment Company Act was written there were approximately 559 investment companies operating in the United States with assets of $4.5 billion. SEC, *Investment Trusts and Investment Companies*, H.R. Doc. No. 279, 76th Cong., 1st Sess., pt. 1, 4, pt. 2, 27 (1939). By the end of 1985, the industry numbered 1,531 investment companeis with assets of $495.5 billion. Investment Company Institute, *1986 Mutual Fund Fact Book* 13.

[83] Investment Company Act Rel. Nos. 150, *supra* note 74, and 9102 (Dec 30, 1975) (Staff Procedurs for Review of Investment Company Sales Literature).

[84] Section 35(c) of the NASD Rules of Fair Practice requires members to submit all advertisements and sales literature concerning registered investment companies to the NASD within ten days of first use or publication. The NASD is a national securities association registered under section 15A of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78*o*]

[85] Section 35(e) of the NASD Rules of Fair Practice obligates NASD members to conform to all Commission rules.

[86] Presently, paragraph (c) of rule 31a-2 requires depositors and principal underwriters of investment companies (except closed-end companies) to keep and maintain records required to be kept by rules under section 17 of the Exchange Act [15 U.S.C. 78q]. Rule 17a-4(b)(4) [17 CFR 240.17a-4)b)(4)] requires broker-dealers to preserve for inspection copies of all communications (which includes their sales literature) sent to customers. In addition, paragraph (d) and (e) of rule 31a-2, by reference to section 204 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. 80b-204], require that investment advisers to investment companies preserve sales literature addressed to more than ten

Continued

proposes to eliminate the duplicative filing requirement, it will continue to monitor investment company ads.

Proposed rule 24b-3 would provide that, for purposes of the 1940 Act, sales material filed with the NASD is deemed filed with the Commission.[87] Proposed paragraph (h) of rule 497 would achieve the same result under the 1933 Act.[88] The Commission also proposes to exclude investment companies from the filing obligation of rule 424 by making rule 497 the exclusive rule governing certain procedural aspects of filing prospectuses.[89] In addition, the Commission is proposing a technical amendment to rule 497 to change an incorrect citation [90] and to require that ads filed with the Commission are identified as rule 482 ads. [91]

The proposed amendments to rules 31a-2 would require investment companies to preserve their sales literature and ads for inspection.[92] This requirement currently applies to an investment company's depositor, investment adviser, and principal underwriter and operates by reference to rules under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] and the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*].[93] The Commission believes the proposed amendments have the advantages of: (1) Applying the maintenance requirement to the investment company so that all sales literature is kept at the fund regardless of the location of the principal underwriter or adviser; (2) utilizing a uniform definition of sales material corresponding to that of section 24(b) of the Act; [94] and (3) clarifying the recordkeeping requirement.

VIII. Cost Benefit of the Proposed Action

Although the proposals could both impose and reduce fund costs, nothing requires funds to advertise their performance. For those income funds which choose to advertise their yield, the use of a standardized yield formula could impose substantial initial costs because of the complexities inherent in a yield computation. These costs are expected to be reduced significantly by the anticipated availability of computer software packages usable by all funds to compute yield which might not otherwise be economically feasible but for the standardization. For income funds that are new or are contemplating advertising their yields for the first time, the standardization may actually reduce costs by making it unnecessary for each fund to develop its own yield formula. Reducing the legal uncertainties surrounding use of performance data should result in some cost savings for funds. The computation of total return should not be costly because it is based on net asset values already calculated by funds on a daily basis. The proposal to eliminate the requirement to file sales material with both the NASD and the Commission should reduce costs.

The primary benefits that would be realized by the proposals are the prevention of misleading performance claims by funds and enabling investors to make meaningful comparisons of fund performance claims. The Commission requests specific comment on its assessment of the costs and benefits associated with the proposal, including any specific estimates of any costs and benefits.

IX. Text of Proposed New Rules, Rule Amendments, and Form Amendments

List of Subjects in Parts 230 and 239

Reporting and recordkeeping requirements and securities.

List of Subjects in Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule, Rule Amendments and Form Amendments

It is proposed to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Regulation C of Part 230 continues to read in part as follows:

Authority: Sections 230.400 to 230.499 issued under sections 6, 8, 10, 19, 48 Stat. 78, 79, 81, as amended, 85, as amended; 15 U.S.C. 77f, 77h, 77j, 77s, * * *

Note.—In §§ 230.400 to 230.499, the numbers to the right of the decimal point correspond with the respective rule number in Regulation C, under the Securities Act of 1933.

2. By revising paragraph (a) and adding a paragraph (f) to § 230.424 to read as follows:

§ 230.424 Filing of prospectuses—number of copies.

(a) Except as provided in paragraph (f), five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement which varies from the form or forms of prospectus included in the registration statement as filed pursuant to § 230.402(a) of this chapter shall be filed as a part of the registration statement not later than the date such form or prospectus is first sent or given to any person.

* * * * *

(f) This rule shall not apply to investment companies.

3. By amending § 230.482 by revising paragraphs (a), introductory text, (a)(1), and the Note after (c), (d), and adding paragraphs (a)(5), (a)(6), the Note after (a)(6), and (e) through (g), as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement, other than one expected from the definition of prospectus by section 2(10) of the Act and Rule 134 thereunder, shall be deemed to be a prospectus under section 10(b) of the Act for the purpose of section 5(b)(1) of the Act if

(1) It is with respect to an investment company registered under the Investment Company Act of 1940 ("1940 Act"), or a business development company which is selling or proposing to sell its securities pursuant to a

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persons. In practice, sales literature is usually maintained and inspected at the investment company. Thus the rule amendments would impose no new obligations on most investment companies.

[87] Sales literature would be deemed filed with the Commission when filed with the NASD in accordance with its rules and procedures.

[88] Rule 497 governs certain procedural aspects of the filing of definitive prospectuses and amendments (including" stickered" amendments) to prospectuses, including omitting prospectuses. Under the rule, omitting prospectuses do not have to be filed as a part of the registration statement, but must be filed with the Commission.

[89] Rule 497 was adopted in connection with the adoption of Form N-1A. Investment Company Act Rel. No. 13426, *supra* note 67. Its provisions parallel those of rule 424 in most respects, differing principally to provide for the filing of the SAI. The Commission believes that rule 497 is appropriate for use by all investment companies.

[90] Rule 497 still contains a reference to rule 434d, which was renumbered as rule 482 without modification in 1982 with the revision of Regulation C under the 1933 Act. Securities Act Rel. No. 6363 (March 3, 1982) [47 FR 11380] (March 16, 1982)].

[91] *See* proposed amendments to paragraph (g) of Rule 482.

[92] The proposed amendments add a subparagraph (3) to paragraph (a) which would require investment companies to preserve their sales material literature during its use and for six years after the end of the fiscal year during which it was last used. Sales material must be kept in an easily accessible place during its use and for two years after the end of the fiscal year during which it was last used.

[93] *See supra* note 86.

[94] The proposed rule amendments would apply to closed-end companies, although section 24(b) does not.

registration statement which has been filed under the Act,

* * * * *

(3) * * *

Note.—The fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter or dealer of its obligation to ensure that the advertisement is not false or misleading.

* * * * *

(5) It does not contain and is not accompanied by any application by which a prospective investor may invest in the investment company; *provided, however,* that a prospectus meeting the requirements of section 10(a) of the Act by which a unit investment trust offers periodic payment plan certificates may contain a contract application although the prospectus includes another prospectus which, pursuant to this rule, omits certain information required by section 10(a) of the Act regarding investment companies in which the unit investment trust invests.

(6) In the case of an advertisement containing performance data of an open-end management investment company or a separate account registered under the 1940 Act as a unit investment trust offering variable annuity contracts ("trust account"), it includes a legend disclosing that the performance data quoted represents past performance and that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; *provided, however,* that an advertisement may omit legend disclosure pertaining to the fluctuation of the principal value of an investment in a money market fund. In addition, if a sales load or any other nonrecurring fee is charged or a fee pursuant to a plan adopted under Rule 12b–1 under the 1940 Act [17 CFR 270.12b–1] is deducted, the advertisement must disclose the maximum amount of the fee or charge, whether the performance data reflects its deduction, and, if not, that its effect would be to reduce the performance quoted.

Note.—All advertisements made pursuant to this rule are subject to Rule 420 [17 CFR 230.420] which, in general, requires all of the printed text to be in at least 10-point type.

* * * * *

(c) * * *

Note.—These advertisements must, however, be otherwise filed in accordance with the requirements of Rule 497 [17 CFR 230.497].

(d) In the case of an investment company which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less, any quotation of the company's yield contained in an advertisement shall be: (1) A quotation of current yield based on the method of computation prescribed in Form N–1A (set forth in §§ 239.15A and 274.11A of this chapter), Form N–3 (set forth in §§ 239.17a and 274.11b of this chapter), or Form N–4 (set forth in §§ 239.17b and 274.11c of this chapter) and identifying the length of and the date of the last day in the base period used in computing that quotation, or

(2) A quotation of current yield described in paragraph (d)(1) of this section and a corresponding quotation of effective yield based on the method of computation prescribed in Forms N–1A, N–3, or N–4; *provided, however,* that when both a quotation of current yield and effective yield are used in the same advertisement, each quotation relates to an identical base period and is given equal prominence.

(e) (i) In the case of an income fund, any quotation of the fund's performance contained in an advertisement shall be a quotation of a current yield (and, if the income fund is a tax exempt income fund, at the option of the fund, a tax equivalent yield) based on the methods of computation prescribed in Forms N–1A, N–3, or N–4, shall identify the length of and the date of the last day in the base period used in computing the quotation, and shall be accompanied by quotations of the income fund's total shareholder return as provided in paragraph (f)(ii) of this rule, *Provided,* That all quotations of performance are given equal prominence.

(ii) For purposes of this rule, an income fund is an open-end management investment company (other than a money market fund referred to in paragraph (d) of this rule) or a trust account that (A) has as its principal investment objective the production of current income primarily through investment in debt obligations, and (B) has a dollar-weighted average of not less than 95 percent of its net assets invested in debt obligations during the base period. However, with respect to a trust account, conditions (A) and (B) shall apply solely to the management company in which the trust account invests.

(iii) For purposes of this rule, a tax exempt income fund is an income fund that has a dollar-weighted average of not less than 95 percent of its net assets invested in debt obligations exempt from income taxation during the base period.

(f) (i) In the case of an open-end management investment company or a trust account other than one described in paragraphs (d) or (e) of this section, any quotation of the company's performance data contained in an advertisement shall be limited to quotations of the company's total shareholder return.

(ii) Total shareholder return shall be presented with equal prominence for each of the last 5 calendar years during which the company was in business and that portion of the current year subsequent thereto ("interim period"), based on the method of computation prescribed in Forms N–1A, N–3, or N–4 and shall identify the year corresponding to each quotation and the length of and the date of the last day of the interim period. When quoted in conjunction with a quotation of current yield, the last day of the last period shall be the same day as the last day of the base period used to measure yield.

(g) In any advertisement in which a performance quotation is included, the last day of the most recent base period used to measure the company's performance shall be as of the most recent practical date considering the type of investment company and the media through which the data will be conveyed; *Provided, however,* That in no case shall the last day of the base period be more than thirty days prior to the date the advertisement is first made available to the public.

4. By revising the title of § 230.497, by revising paragraphs (a) and (g), and by adding new paragraph (h), to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement which varies from the form or forms of prospectus included in the registration statement as filed pursuant to § 230.402(a) of this chapter shall be filed as a part of the registration statement not later than the date such form of prospectus is first sent or given to any person: *Provided, however,* That an investment company advertisement which is deemed to be a Section 10(b) prospectus pursuant to § 230.482 of this chapter and which is required to be filed pursuant to this paragraph shall not be filed as part of the registration statement.

* * * * *

(g) Each copy of a prospectus under this rule shall contain in the upper right hand corner of the cover page the paragraph of this rule under which the filing is made and the file number of the registration statement to which the prospectus relates. In addition, each

investment company advertisement deemed to be a Section 10(b) prospectus pursuant to § 230.482 of this chapter shall contain in the upper right hand corner of the cover page the legend "Rule 482 ad." The information required by this paragraph may be set forth in longhand, provided it is legible.

(h) An investment company advertisement deemed to be a Section 10(b) prospectus pursuant to § 230.482 of this chapter shall be considered to be filed with the Commission upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*] which has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37. * * *

6. By adding § 270.24b–3 to read as follows:

§ 270.24b–3 Sales literature deemed filed.

Any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Act [15 U.S.C. 80a–24(b)] upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*] which has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.

7. By amending paragraph (a) of § 270.31a–2 by substituting a semicolon for the period at the end of paragraph (a)(2) and inserting a new paragraph (a)(3) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(3) Preserve for a period not less than 6 years from the end of the fiscal year last used, the first 2 years in an easily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors.

* * * * *

8. By adding § 270.34b–1 to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

Any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors which is required to be filed with the Commission by section 24(b) of the Act [15 U.S.C. 80a–24(b)] and which contains any performance data ("sales literature") shall have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature also contains performance data calculated in a manner prescribed by paragraphs (d) through (g) (which refer to items in Forms N–1A, N–3 and N–4], and the disclosures required by those paragraphs and by paragraph (a)(6), of Rule 482 under the Securities Act of 1933 [17 CFR 230.482].

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

9. The authority citation for Part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*

10. By amending the General Instructions by adding D.2., revising paragraph 1.(b) of the General Instructions for Parts A and B, revising Items 3(c) and 22, adding (b)(16) to Item 24, and revising the Instructions to Item 24 of Form N–1A as follows:

§ 274.11A Form N–1A, Registration Statement of Open-End Management Investment Companies.

* * * * *

General Instructions

* * * * *

D. Amendments

* * * * *

2. The revision of an omitting prospectus advertisement for the purpose of updating performance data does not require the filing of an amendment to the prospectus if the performance data is calculated in the manner described in the prospectus and the Statement of Additional Information.

* * * * *

General Instructions for Parts A and B

1. * * *

* * * * *

(b) Item 3 of Part A, "Condensed Financial Information" (except paragraph (c)), should not be further back in the prospectus than the fifth page thereof and should not be preceded by any other chart or table (except for the table of contents required by Rule 481(c) under 1933 Act [17 CFR 230.481(c)]).

* * * * *

PART A. *INFORMATION REQUIRED IN A PROSPECTUS*

* * * * *

Item 3. *Condensed Financial Information*

* * * * *

(c) If the Registrant advertises any performance data, include a brief explanation of how performance is calculated, whether the data excludes sales load or other nonrecurring charges, and the effect on performance of excluding such charges. If the Registrant advertises its performance calculated in more than one manner, briefly explain the material differences between the calculations.

* * * * *

PART B. INFORMATION REQUIRED IN A *STATEMENT OF ADDITIONAL INFORMATION*

* * * * *

Item 22. *Calculation of Performance Data*

(a) *Money Market Funds.* If the Registrant holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, and it it advertises a yield quotation or an effective yield quotation, furnish:

(i) a yield quotation based on the seven days ended on the date of the most recent balance sheet included in the registration statement, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent;

(ii) an effective yield quotation based on the seven days ended on the date of the most recent balance sheet included in the registration statement, carried to at least the nearest hundredth of one percent, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical preexisting account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1 to the base period return, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula: EFFECTIVE YIELD = [(BASE PERIOD RETURN + 1) $^{365/7}$]–1;

(iii) the length of and the date of the last day in the base period used in computing the quotation(s); and

(iv) a description of the method(s) by which the yield quotation(s) is computed.

Instructions:

1. When calculating the yield or effective yield quotations, the calculation of net change in account value must include:

(a) the value of additional shares purchased with dividends from the original share and dividends declared on both the original share and any such additional shares;

(b) all fees, other than nonrecurring account or sales charges, that are charged to all shareholder accounts in proportion to the length of the base period and the fund's mean (or, if elected and applied consistently on an annual basis, the fund's median) account size.

2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield.

3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.

4. If the Registrant does not advertise an effective yield quotation, it need not disclose or discuss the computation of an effective yield quotation.

(b) *Income Funds.* If the Registrant (other than a registrant described in paragraph (a)) has as its principal investment objective the production of current income primarily through investment in debt obligations, and if it advertises any performance quotation, furnish:

(i)(A) a yield quotation based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, computed by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$\text{Yield} = \frac{[(a-b)/c]xd}{e}$$

Where:

a = dividends and interest earned during the period.

b = expenses accrued for the period (net of reimbursements).

c = the average daily number of shares outstanding during the period.

d = either "365/30" if the period used is 30 days or "12" if the period used is one month.

e = the maximum offering price per share on the last day of the period.

(B) at the option of the Registrant and if the primary investment objective of the Registrant is the production of current income primarily through investment in debt obligations exempt from federal, state, or local income taxation, a tax equivalent yield, computed by dividing the yield of the Registrant (as computed pursuant to Item 22(b)(i)(A)) by a stated income tax rate.

Instructions:

1. With respect to the treatment of discount and premium on debt obligations other than debt referred to in Instruction 2:

(a) Adjust interest earned for discount and premium, other than market discount on obligations exempt from federal taxation ("tax-exempt obligations").

(b) Amortize original issue discount on all debt obligations and market discount on debt obligations other than tax-exempt obligations to par value at maturity. Do not amortize market discount on tax-exempt obligations.

(c) If the market discount with respect to any obligation is less than ¼ of 1 percent of the product of the stated redemption price of the obligation at maturity multiplied by the number of complete years to maturity after the obligation is acquired, the discount may be considered zero. Treat any original issue discount in the same manner.

(d) Amortize premium on debt obligations (i) to the call price at the next call date on which the obligation reasonably may be expected to be called or (ii) to par value at maturity if there is no call date.

(e) Use the constant yield method to amortize discount and premium.

(f) Amortize debt obligations from the date on which the obligation is acquired.

2. With respect to the treatment of discount and premium on mortgage or other receivables-backed obligations which are expected to be subject to monthly payments of principal and interest ("paydowns"):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period.

(b) The Registrant may elect (i) to amortize the discount and premium on the remaining security to the weighted average maturity date, if such information is available, or to the remaining term of the security, if the weighted average maturity date is not available, or (ii) not to amortize discount or premium on the remaining security.

(c) If the Registrant elects to amortize premium or discount, follow Instructions 1(c), (e), and (f).

3. Recognize dividend income when dividends appropriately may be recorded in the company's records in accordance with generally accepted accounting principles.

4. Do not use equalization accounting in the calculation of yield.

5. Include expenses accrued pursuant to a plan adopted under rule 12b-1 under the 1940 Act [17 CFR 270.12b-1] among the expenses accrued for the period ("b" in the equation above). Income accrued pursuant to a plan may reduce the accrued expenses, but only to the extent the income does not exceed expenses accrued for the period.

6. Include among the expenses accrued for the period all recurring fees that are charged to all shareholder accounts.

7. Undeclared earned income, computed in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income which, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

8. The calculation of yield must reflect the maximum sales load charged on reinvestment of dividends.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

(ii) a total shareholder return quotation based on the 12 months ended on the date of the most recent balance sheet included in the registration statement (or the most recently completed calendar year), computed by dividing the net change in the value of a hypothetical shareholder account established by an initial payment of $1,000 at the beginning of the period by $1,000, according to the following formula:

$$\text{Total Shareholder Return} = \frac{\text{Ending Value—Amount Invested}}{\text{Amount Invested}}$$

$$\text{Total Shareholder Return} = \frac{([[a+b+c-d)e] \times (1-f) - [g + (h \times 1{,}000)]) - 1{,}000}{1{,}000}$$

Where:

a = number of shares purchased at the beginning of the period.

b = number of shares purchased during the period with reinvested dividends.

c = number of shares purchased during the period with reinvested distributions.

d = number of shares redeemed to pay fees charges to all shareholder accounts.

e = net asset value per share at the end of the period.

f = nonrecurring charges deducted from redemptions that are measured as a percentage of redemptions.

g = nonrecurring charges that are measured as a dollar amount.

h = nonrecurring charges deducted from redemptions that are measured as a percentage of purchase payments.

Instructions:

1. In determining the number of shares the $1,000 initial investment will purchase ("a" in the equation above), assume the maximum sales load (or other charges deducted from payments) is deducted from the initial payment. When total shareholder return quotations are provided for more than one period, sales load (or other charges deducted from payments) should be deducted only from the initial payment for the earliest period (except as provided in Instruction 2).

2. Assume all dividends and distributions by the fund are reinvested at the price stated

in the prospectus on the reinvestment dates during the period, *i.e.*, total shareholder return must reflect any sales load charged upon reinvestment of dividends.

3. Exclude from the total return calculation all dividends and distributions declared but not paid at the beginning of the period, but include as paid all dividends and distributions declared but not paid at the end of the period. Assume such declared but unpaid amounts are reinvested at the end of the period.

4. Include all recurring fees ("d" in the equation above) that are charged to all shareholder accounts in proportion to the length of the base period and the fund's mean (or, if elected and applied consistently with respect to each total shareholder return quotation, the fund's median) account size. If recurring fees charged to shareholder accounts are paid other than by redemption of fund shares, they should be otherwise appropriately reflected.

5. Determine the nonrecurring charge percentages ("f" and "h" in the equation above) by adding:

(a) the maximum percentage of all nonrecurring charges deducted upon redemption which do not vary with the age of the account; and

(b) The maximum percentage of all nonrecurring charges deducted upon redemption which vary with the age of the account assuming that a complete redemption occurs on the last day of the period.

When total shareholder return quotations are provided for more than one 12 month period, assume a redemption at the end of the most recent period for purposes of calculating and deducting charges deducted upon redemption.

6. Annualize a total shareholder return quotation for a period of less than one year by multiplying the return of the period ("base period") by the quotient of 12 (or 52 if the base period is measured in terms of weeks) divided by the number of months (weeks) in the base period.

7. When total shareholder return quotations are provided for more than one period and the amount or structure of fees, charges, or loads are changed, recompute the total shareholder return quotations for earlier periods using the current charges which would have been applicable had they been in effect during each of the earlier periods.

8. Carry the total shareholder return quotation to the nearest hundredth of one percent.

(iii) the length of and the date of the last day in the base period used in computing the quotations; and

(iv) a description of the method by which the quotations are computed.

(c) *Other Funds.* If the Registrant is not a registrant described by Item 22 (a) or (b) above, and if it advertises any performance quotation, furnish:

(i) a total shareholder return quotation based on the 12 month period ended on the date of the most recent balance sheet included in the registration statement (or the most recently completed calendar year), computed by dividing the net change in the value of a hypothetical shareholder account established by an initial payment of $1,000 at the beginning of the period by $1,000, according to the formula set out in Item 22(b)(ii) above;

(ii) the length of and the date of the last day in the base period used in computing the quotation; and

(iii) a description of the method by which the quotation is computed.

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PART C. *OTHER INFORMATION*

Item 24. *Financial Statements and Exhibits*

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(b) Exhibits:

* * * * *

(16) schedule for computation of each performance quotation provided in the Registration Statement in response to Item 22 (which need not be audited).

* * * * *

Instructions:

Subject to the Rules regarding incorporation by reference, the foregoing exhibits shall be filed as part of the Registration Statement. Exhibits numbered 10–12 and 16 above are required to be filed only as part of a 1933 Act Registration Statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits required above.

11. Guideline 32, of Guidelines for Form N–1A is proposed to be revised to read as follows:

Guide 32. *Performance Data*

Item 3(c) requires a brief explanation of how the registrant calculates its historical performance for purposes of advertising this data. Algebraic equations and detailed, intricate explanations should be avoided in favor of a more general, concise description of the essential features of the data and how it is computed. For example, a no-load money market fund advertising both its yeild and effective yield might describe these two yields in the following manner:

From time to time the Fund advertises its "yield" and "effective yield." *Both yield figures are based on historical earnings and are not intended to indicate future performance.* The "yield" of the Fund refers to the income generated by an investment in the Fund over a seven-day period (which period will be stated in the advertisement). This income is then "annualized." That is, the amount of income generated by the investment during that week is assumed to be generated each week over a 52-week period and is shown as a percentage of the investment, The "effective yield" is calculated similarly but, when annualized, the income earned by an investment in the Fund is assumed to be reinvested. The "effective yield" will be slightly higher than the "yield"; because of the compounding effect of this assumed reinvestment.

For guidance in responding to Item 22, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) [48 FR 10297 (March 11, 1983)]; Investment Company Act Release No. 11028 (January 28, 1980) [45 FR 7578 (Febraury 4, 1980)]; and Investment Company Act Release No 11379 (September 30, 1980) [45 FR 67079 (October 9, 1980)].

12. By amending the General Instructions by revising Instruction F, paragraph 1(b) of the General Instructions for Parts A and B, Item 4(c) and Item 25, by adding (b)(16) to Item 28, and revising the instructions to Item 28 of Form N–3 as follows:

§ 274.11b Form N–3, registration statement of separate accounts organized as management investment companies.

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General Instructions

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F. Amendments

1. Attention is specifically directed to Rule 8b-16 under the 1940 Act [17 CFR 270.8b-16] which requires the annual amendment of Registration Statements filed pursuant to Section 8(b) of the 1940 Act. Where Form N–3 has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

2. The revision of an omitting prospectus advertisement for the purpose of updating performance data does not require the filing of an amendment to the prospectus if the performance data is calculated in the manner described in the prospectus and the Statement of Additional Information.

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General Instructions For Parts A and B

1. * * *

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(b) Item 4, "Condensed Financial Information" (except paragraph (c)), should not be preceded by any other chart or table (except for the table of contents required by Rule 481 under the 1933 Act [17 CFR 230.481(c)]),

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PART A. *INFORMATION REQUIRED IN A PROSPECTUS*

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Item 4. *Condensed Financial Information*

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(c) If the Registrant advertises any performance data, include a brief explanation of how performance is calculated, whether the data excludes sales load or other nonrecurring charges, and the effect on performance of excluding such charges. If the Registrant advertises its performance calculated in more than one manner, briefly explain the material differences between the calculations.

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PART B. INFORMATION REQUESTED IN A *STATEMENT OF ADDITIONAL INFORMATION*

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Item 25. *Calculation of Performance Data*

(a) *Money Market Accounts.* For each account or sub-account that is held out to be a "money market" account or sub-account or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, and which advertises a yield quotation or an effective yield quotation, furnish:

(i) a yield quotation based on the seven days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting figure carried to at least the nearest hundredth of one percent;

(ii) an effective yield quotation based on the seven days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, carried to at least the nearest hundredth of one percent, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1 to the base period return, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula: EFFECTIVE YIELD = [(BASE PERIOD RETURN + 1) $^{365/7}$]−1;

(iii) the length of and the date of the last day in the base period used in computing the quotation(s); and

(iv) a description of the method(s) by which the yield quotation(s) is computed.

Instructions:

1. When calculating the yield or effective yield quotations, the calculation of net change in account value must include all deductions that are charged to all contractowner accounts in proportion to the length of the base period and the sub-account's mean (or, if elected and applied consistently on an annual basis, the fund's median) account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of yield or effective yield. However, the amount or specific rate of the deductions must be disclosed.

3. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield.

4. The Registrant may furnish separate yield quotations from individual and group contracts.

5. If the Registrant does not advertise an effective yield quotation, it need not disclose or discuss the computation of an effective yield quotation.

(b) *Income Accounts.* For each account or sub-account (other than an account or sub-account described in paragraph (a)) which has as its principal investment objective the production of current income primarily through investment in debt obligations, and which advertises any performance quotation, furnish:

(i) a yield quotation based on a 30-day (or one month) period ended on the date of the most recent balance sheet of the Registrant included in the registration statement, computed by dividing the net investment income per accumulation unit earned during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$\text{Yield} = \frac{[(a-b)/c]xd}{e}$$

Where:

a = dividends and interest earned during the period.

b = expenses accrued for the period (net of reimbursements).

c = the average daily number of accumulation units outstanding during the period.

d = either "365/30" if the period used is 30 days or "12" if the period used is one month.

e = the maximum offering price per accumulation unit on the last day of the period.

Instructions:

1. With respect to the treatment of discount and premium on debt obligations other than debt referred to in Instruction 2:

(2) Adjust interest earned for discount and premium, other than market discount on obligations exempt from federal taxation ("tax-exempt obligations").

(b) Amortize original issue discount on all debt obligations and market discount on debt obligations other than tax-exempt obligations to par value at maturity. Do not amortize market discount on tax-exempt obligations.

(c) If the market discount with respect to any obligation is less than ¼ of 1 percent of the product of the stated redemption price of the obligation at maturity multiplied by the number of complete years to maturity after the obligation is acquired, the discount may be considered zero. Treat any original issue discount in the same manner.

(d) Amortize premium on debt obligations (i) to the call price a the next call date on which the obligation may reasonably expected to be called or (ii) to par value at maturity if there is no call date.

(e) Use the constant yield method for amortization of discount and premium.

(f) Amortize debt obligations from the date on which the obligation is acquired.

2. With respect to the treatment of discount and premium on mortgage or other receivables-backed obligations which are expected to be subject to monthly payments of principal and interest ("paydowns"):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period.

(b) The Registrant may elect (i) to amortize the discount and premium on the remaining security to the weighted average maturity date, if such information is available, or to the remaining term of the security, if the weighted average maturity date is not available, or (ii) not to amortize discount or premium on the remaining security.

(c) If the Registrant elects to amortize premium or discount, follow Instructions 1(c), (e), and (f).

3. Recognize dividend income when dividends appropriately may be recorded in the company's records in accordance with generally accepted accounting principles.

4. Do not use equalization accounting in the calculation of yield.

5. Include expenses accrued pursuant to a plan adopted under rule 12b-1 under the 1940 Act [17 CFR 270.12b-1] among the expenses accrued for the period ("b" in the equation above). Income accrued pursuant to a plan may reduce the accrued expenses, but only to the extent the income does not exceed expenses accrued for the period.

6. Include among the expenses accrued for the period all recurring fees that are charged to all contractowner accounts.

7. Disclose the amount or specific rate of any nonrecurring account or sales charges.

(ii) a total contractowner return quotation based on the 12 months ended on the date of the most recent balance sheet of the Registrant included in the registration statement (or the most recently completed calendar year), computed by dividing the net change in the value of a hypothetical contractowner account established by an initial payment of $1,000 at the beginning of the period by $1,000, according to the following formula:

$$\text{Total Contractowner Return} = \frac{\text{Ending Value—Contractowner Payment}}{\text{Contractowner Payment}}$$

$$\text{Total Contractowner Return} = \frac{([[(a-b)c]\times(1-d)-[e+(f\times1{,}000)]])\times1{,}000}{1{,}000}$$

Where:
a=number of accumulation units purchased at the beginning of the period.
b=number of accumulation units redeemed to pay fees charged to all contractowner accounts.
c=accumulation unit value at the end of the period.
d=nonrecurring charges deducted from redemptions that are measured as a percentage of redemptions.
e=nonrecurring charges that are measured as a dollar amount.
f=nonrecurring charges deducted from redemptions that are measured as a percentage of purchase payments.

Instructions:

1. In determining the number of accumulation units the $1,000 initial investment will purchase ("a" in the equation above), assume the maximum sales load (or other charges deducted from payments) is deducted from the initial payment. When total contractowner return quotations are provided for more than one period, sales load (or other charges deducted from payments) should be deducted only from the initial payment for the earliest period.

2. Exclude from the total return calculation all dividends and distributions declared but not paid at the beginning of the period, but include as paid all dividends and distributions declared but not paid at the end of the period. Assume such declared but unpaid amounts are reinvested at the end of the period.

3. Include all recurring fees ("b" in the equation above) that are charged to all contractowner accounts in proportion to the length of the base period and the account's mean (or, if elected and applied consistently with respect to each total shareholder return quotation, the account's median) account size. If recurring fees charged to contractowner accounts are paid other than by redemption of accumulation units, they should be otherwise appropriately reflected.

4. Determine the nonrecurring charge percentages ("d" and "f" in the equation above) by adding:

(a) The maximum percentage of all nonrecurring charges deducted upon redemption which do not vary with the age of the account; and

(b) The maximum percentage of all nonrecurring charges deducted upon redemption which vary with the age of the account assuming that a complete redemption occurs on the last day of the period.

When total contractowner return quotations are provided for more than one 12-month period, assume a redemption at the end of the most recent period for purposes of calculating and deducting charges deducted upon redemption.

5. Annualize a total contractowner return quotation for a period of less than one year by multiplying the return of the period ("base period") by the quotient of 12 (or 52 if the base period is measured in terms of weeks) divided by the number of months (weeks) in the base period.

6. When total contractowner return quotations are provided for more than one period and the amount or structure of fees, charges, or loads are changed, recompute the total contractowner return quotations for earlier period using the current charges that would have been applicable had they been in effect during each of the earlier periods.

7. Carry the total contractowner return quotation to the nearest hundredth of one percent.

(iii) the length of and the date of the last day in the base period used in computing the quotations; and

(iv) a description of the methods by which the quotations are computed.

(c) *Other Accounts.* For each account or sub-account which is not an account or sub-account described by Item 25 (a) or (b) above, and which advertises any performance quotation, furnish:

(i) a total contractowner return quotation based on the 12-month period ended on the date of the most recent balance sheet of the Registrant included in the registration statement (or the most recently completed calendar year), computed by dividing the net change in the value of a hypothetical contractowner account established by an initial payment of $1,000 at the beginning of the period by $1,000, according to the formula set out in Item 25(b)(ii) above;

(ii) the length of and the date of the last day in the base period used in computing the quotations; and

(iii) a description of the methods by which the quotation is computed.

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PART C. *OTHER INFORMATION*

Item 28. *Financial Statements and Exhibits*

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(b) Exhibits:

* * * * *

(16) schedule for computation of each performance quotation provided in the Registration Statement in response to Item 25 (which need not be audited).

* * * * *

Instructions:

1. Subject to the Rules regarding incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as part of the Registration Statement. Exhibits numbered 5, 12, 13, 14, and 16 above need be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

* * * * *

13. Guideline 30, of Guidelines for Form N-3 is proposed to be revised to read as follows:

Guide 30. *Performance Data*

Item 4(c) requires a brief explanation of how the registrant calculates its historical performance for purposes of advertising this data. Algebraic equations and detailed, intricate explanation should be avoided in favor of a more general, concise description of the essential features of the data and how it is computed. For example, a registrant advertising its money market sub-account's yield and effective yield might describe these two yields in the following manner:

From time to time the Account advertises its money market sub-account's "yield" and "effective yield." *Both yield figures are based on historical earnings and are not intended to indicate future performance.* The "yield" of the sub-account refers to the income generated by an investment in the sub-account over a seven-day period (which period will be stated in the advertisement). This income is then "annualized." That is, the amount of income generated by the investment during that week is assumed to be generated each week over a 52-week period and is shown as a percentage of the investment. The "effective yield" is calculated similarly but, when annualized, the income earned by an investment in the Fund is assumed to be reinvested. The "effective yield" will be slightly higher than the "yield" because of the compounding effect of this assumed reinvestment. Neither yield quotation takes into consideration sales load deducted from purchase payments which, if included, would reduce the "yield" and "effective yield."

For guidance in responding to Item 25, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) [48 FR 10297 (March 11, 1983)]; Investment Company Act Release No. 11028 (January 28, 1980) [45 FR 7578 (February 4, 1980)]; and Investment Company Act Release No. 11379 (September 30, 1980) [45 FR 67079 (October 9, 1980)].

Deductions should be prorated among the sub-accounts of the separate account. If the deduction is a flat fee charged to all contractowner accounts (*e.g.*, $25.00 per contractowner account per year), the deduction should be prorated by multiplying the flat fee by a fraction the numerator of which is the average number of contractowner accounts that have money allocated to the sub-account and the denominator of which is the sum of the average number of contractowner accounts for all of the sub-accounts for that kind of contract.

Where the registrant issues more than one contract form and the performance for each is materially different (due, for example, to different sales loads, fees, or other charges), the registrant should quote the performance relating to the contract form containing the highest level of charges or calculate and quote separate performance figures for each contract form advertised. Where the charge structure among or between different contract forms is so different that none can be determined to possess the "highest level" of charges, performance figures for all forms should be quoted. Where separate performance figures are quoted for different contract forms, the omitting prospectus advertisement should clearly disclose the trade name or other appropriate identification of each form and, if relevent, the particular category of investor who may purchase each form (*e.g.*, groups or individuals), or type of retirement plan.

14. By amending the General Instructions by revising paragraph F, 1(b) of the General Instructions for Parts A and B, Item 4(b) and

Item 21, by adding paragraph (b)(13) to Item 24, and revising the Instructions to Item 24 of Form N-4 to read as follows:

§ 274.11c Form N-4, registration statement of separate accounts organized as unit investment trusts.

* * * * *

General Instructions

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F. Amendments

1. Where Form N-4 has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

2. The revision of an omitting prospectus advertisement for the purpose of updating performance data does not require the filing of an amendment to the prospectus if the performance data is calculated in the manner described in the prospectus and the Statement of Additional Information.

* * * * *

General Instructions for Parts A and B

1. * * *

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(b) Item 4, "Condensed Financial Information" (except paragraph (b)), should not be preceded by any other chart or table (except for the table of contents required by Rule 481 under the 1933 Act [17 CFR 230.481(c)]),

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PART A. *INFORMATION REQUIRED IN A PROSPECTUS*

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Item 4. *Condensed Financial Information*

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(b) If the Registrant advertises any performance data, include a brief explanation of how performance is calculated, whether the data excludes sales load or other nonrecurring charges, and the effect on performance of excluding such charges. If the Registrant advertises its performance calculated in more than one manner, briefly explain the material differences between the calculations.

* * * * *

PART B. *INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION*

* * * * *

Item 21. *Calculation of Performance Data*

(a) *Money Market Funded Sub-Accounts.* For each sub-account that is funded by a "money market" fund or portfolio company with an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, and for which the Registrant advertises a yield quotation or an effective yield quotation, furnish:

(i) a yield quotation based on the seven days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and multiplying the base period return by ($\frac{365}{7}$) with the resulting figure carried to at least the nearest hundredth of one percent;

(ii) an effective yield quotation based on the seven days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, carried to at least the nearest hundreth of one percent, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain a base period return, and then compounding the base period return by adding 1 to the base period return, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

Effective Yield = [(Base Period Return + 1) $^{\frac{365}{7}}$]−1;

(iii) the length of and the date of the last day in the base period used in computing the quotation(s); and

(iv) a description of the method(s) by which the yield quotation(s) is computed.

Instructions:

1. When calculating the yield or effective yield quotations, the calculation of net change in account value must include all deductions that are charged to all contractowner accounts in proportion to the length of the base period and the sub-account's mean (or, if elected and applied consistently on an annual basis, the fund's median) account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of yield and effective yield. However, the amount or specific rate of such deductions must be disclosed.

3. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield.

4. The Registrant may furnish separate yield quotations for individual and group contracts.

5. If the Registrant does not advertise an effective yield quotation, it need not disclose or discuss the computation of an effective yield quotation.

(b) *Income Fund Funded Sub-Accounts.* For each sub-account (other than a sub-account described in paragraph (a)):

(1) that is funded by a portfolio company which (i) has as its principal investment objective the production of current income primarily through investment in debt obligations, (ii) has a dollar-weighted average of not less than 95 percent of its net assets invested in debt obligations during the base period, and (iii) calculates its net investment income in a manner consistent with Item 22(b)(i) of Form N-1A and instructions thereto; (2) that receives dividends from the portfolio company on a daily basis; and (3) for which the Registrant advertises any performance quotation, furnish:

(i) a yield quotation based on a 30-day (or one month) period ended on the most recent balance sheet of the Registrant included in the registration statement, computed by dividing the net investment income per accumulation unit received from the portfolio company during the period less any recurring charges deducted from the sub-account during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$\text{Yield} = \frac{[(a-b)/c]\times d}{e}$$

Where:

a = dividends received from the portfolio company.

b = expenses accrued for the period (net of reimbursements).

c = the average daily number of accumulation units outstanding during the period.

d = either "365/30" if the period used is 30 days or "12" if the period used is one month.

e = the maximum offering price per accumulation unit on the last day of the period.

Instructions:

1. Include among the expenses accrued for the period all recurring fees that are charged to all contractowner accounts.

2. Disclose the amount or specific rate of any nonrecurring account or sales charges.

(ii) a total contractowner return quotation based on the 12 months ended on the date of the most recent balance sheet of the Registrant included in the registration statement (or the most recently completed calendar year), computed by dividing the net change in the value of a hypothetical contractowner account established by an initial payment of $1,000 at the beginning of the period by 1,000, according to the following formula:

$$\text{Total Contractowner Return} = \frac{\text{Ending Value} - \text{Contractowner Payment}}{\text{Contractowner Payment}}$$

$$\text{Total Contractowner Return} = \frac{[[(a-b)c]\times(1-d) - [e\times(f\times 1{,}000)]] - 1{,}000}{1{,}000}$$

Where:
a=number of accumulation units purchased at the beginning of the period.
b=number of accumulation units redeemed to pay fees charged to all contractowner accounts.
c=accumulation unit value at the end of the period.
d=nonrecurring charges deducted from redemptions that are measured as a percentage of redemptions.
e=nonrecurring charges that are measured as a dollar amount.
f=nonrecurring charges deducted from redemptions that are measured as a percentage of purchase payments.

Instructions:

1. In determining the number of accumulation units the $1,000 initial investment will purchase ("a" in the equation above), assume the maximum sales load (or other charges deducted from payments) is deducted from the initial payment. When total contractowner return quotations are provided for more than one period, sales load (or other charges deducted from payments) should be deducted only from the initial payment for the earliest period.

2. Exclude from the total return calculation all dividends and distributions declared but not paid at the beginning of the period, but include as paid all dividends and distributions declared but not paid at the end of the period. Assume such declared but unpaid amounts are reinvested at the end of the period.

3. Include all recurring fees ("b" in the equation above) that are charged to all contractowner accounts in proportion to the length of the base period and the account's mean (or, if elected and applied consistently with respect to each total shareholder return quotation, the account's median) account size. If recurring fees charged to contractowner accounts are paid other than by redemption of accumulation units, they should be otherwise appropriately reflected.

4. Determine the nonrecurring charge percentages ("d" and "f" in the equation above) by adding:

(a) The maximum percentage of all nonrecurring charges deducted upon redemption which do not vary with the age of the account; and

(b) The maximum percentage of all nonrecurring charges deducted upon redemption which vary with the age of the account assuming that a complete redemption occurs on the last day of the period.

When total contractowner return quotations are provided for more than one 12-month period, assume a redemption at the end of the most recent period for purposes of calculating and deducting charges deducted upon redemption.

5. Annualize a total contractowner return for a period of less than one year by multiplying the return of the period ("base period") by the quotient of 12 (or 52 if the base period is measured in terms of weeks) divided by the number of months (weeks) in the base period.

6. When total contractowner return quotations are provided for more than one period and the amount or structure of fees, charges, or loads are changed, recompute the total contract-owner return quotations for earlier period using the current charges that would have been applicable had they been in effect during each of the earlier periods.

7. Carry the total contractowner return quotation to the nearest hundredth of one percent.

(iii) the length of and the date of the last day in the base period used in computing the quotations; and

(iv) a description of the methods by which the quotations are computed.

(c) *Other Accounts.* For each sub-account that is not a sub-account described by Item 21 (a) or (b) above, and for which the Registrant advertises any performance quotation, furnish:

(i) a total contractowner return based on the 12 month period ended on the date of the most recent balance sheet of the Registrant included in the registration statement (or the most recently completed calendar year), computed by dividing the net change in the value of a hypothetical contractowner account established by an initial payment of $1,000 at the beginning of the period by $1,000, according to the formula set out in Item 21(b)(ii) above;

(ii) the length of and the date of the last day in the base period used in computing the quotation; and

(iii) a description of the method by which the quotation is computed.

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PART C. *OTHER INFORMATION*

Item 24. *Financial Statements and Exhibits*

* * * * *

(b) Exhibits:

* * * * *

(13) schedule for computation of each performance quotation provided in the Registration Statement in response to Item 21 (which need be audited).

* * * * *

Instructions

1. Subject to the Rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the Registration Statement. Exhibits numbered 3, 9, 10, 11, and 13 above need be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

* * * * *

15. Guideline 6, of Guidelines for Form N-4 is proposed to be revised to read as follows:

Guide 6. *Performance Data*

Item 4(b) requires a brief explanation of how the registrant calculates its historical performance for purposes of advertising this data. Algebraic equations and detailed, intricate explanations should be avoided in favor of a more general, concise description of the essential features of the data. For example, a registrant advertising its money market sub-account's yield and effective yield might describe these two yields in the following manner:

From time to time the Account advertises its money market sub-account's "yield" and "effective yield." *Both yield figures are based on historical earnings and are not intended to indicate future performance.* The "yield" of the sub-account refers to the income generated by an investment in the sub-account over a seven day period (which period will be stated in the advertisement). This income is then "annualized." That is, the amount of income generated by the investment during that week is assumed to be generated each week over a 52 week period and is shown as a percentage of the investment. The "effective yield" is calculated similarly but, when annualized, the income earned by an investment in the Fund is assumed to be reinvested. The "effective yield" will be slightly higher than the "yield" because of the compounding effect of this assumed reinvestment. Neither yield quotation takes into consideration sales load deducted from purchase payments which, if included, would reduce the "yield" and "effective yield."

For guidance in responding to Item 21, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) [48 FR 10297 (March 11, 1983)]; Investment Company Act Release No. 11028 (January 28, 1980) [45 FR 7578 (February 4, 1980)]; and Investment Company Act Release No. 11379 (September 30, 1980) [45 FR 67079 (October 9, 1980)].

Deductions should be prorated among the sub-accounts of the separate account. If the deduction is a flat fee charged to all contractowner accounts (*e.g.*, $25.00 per contractowner account per year), the deduction should be prorated by multiplying the flat fee by a fraction the numerator of which is the average number of contractowner accounts that have money allocated to the sub-account and the denominator of which is the sum of the average number of contractowner accounts that have money allocated to each of the sub-accounts for the same kind of contract.

Where the registrant issues more than one contract form and the performance for each is materially different (due, for example, to different sales loads, fees, or other charges), the registrant should quote the performance relating to the contract form containing the highest level of charges or calculate and quote separate performance figures for each contract form advertised. Where the charge structure among or between different contract forms is so different that none can be determined to possess the "highest level" of charges, performance figures for all forms should be quoted. Where separate performance figures are quoted for different contract forms, the omitting prospectus advertisement should clearly disclose the trade name or other appropriate identification of each form and, if relevant, the particular category of investor who may purchase each form (*e.g.*, groups or individuals), or type of retirement plan.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in

accordance with 5 U.S.C. 603 regarding the rules, rule amendments and form amendments proposed herein. The Analysis explains that the proposals would standardize the computation of fund performance data and improve disclosure regarding performance data. It states that the objective of the proposals is to provide prospective investors with greater information about fund performance so that they may assess and compare performance claims made by funds. The Analysis indicates that the proposal would primarily affect those funds which advertise based on performance and that the burden should not be great because the proposal merely standardizes a method of computation which would have had to be used in some form to produce a performance quotation. To the extent the proposal imposes a regulatory burden on small entities by mandating the use of specific performance calculations, this burden should be alleviated by the expected development of commercially available computer software usable by all funds to compute their performance based on the standardized methods. In addition, the regulatory burden is expected to be reduced somewhat by the relaxation of the advertisement filing requirements. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Robert E. Plaze, Attorney, Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

By the Commission.

Jonathan G. Katz,

Secretary.

September 17, 1986.

Exhibit I—Investment Company Institute Submission to The Division of Investment Management

Communications to Investors Concerning Income Funds

The following principles apply to any communication (whether in writing, by radio, or by television) that (1) contains a yield quotation or other performance or distribution figure, unless the only such figure is total return, and (2) is used by any person to offer to sell or induce the sale of securities of any income fund. For purposes of this document, an income fund is any mutual fund (other than a money market fund) that has as its principal investment objective the production of current income primarily through investment in debt obligations or writing options on securities.

I. Any quotaton of an income fund's yield must be two times [the following fraction plus one raised to the ½ (365/30) power (if the period is 30 days) or raised to the sixth power (if the period is one calendar month) minus one]:

dividends and interest earned during the period
  minus
expenses accrued for the period (net of reimbursements)
  divided by
the average daily number of shares outstanding for the period
  divided by
the maximum offering price per share on the last day of the period.

Notes

1. The following rules apply to the treatment of discount and premium on obligations other than mortgage-backed securities.

a. Interest must be adjusted for discount and premium, other than market discount on tax-exempt obligations.

b. Market discount on debt obligations other than tax-exempt obligations must be amortized to par value at maturity.

c. Market discount on tax-exempt obligations may not be amortized.

d. Original issue discount on debt obligations must be amortized to par value at maturity.

e. If the market discount or original issue discount is less than ¼ of 1 percent of the stated redemption price of the obligation at maturity multiplied by the number of complete years to maturity after the obligation is acquired, then the discount may be considered zero.

f. Premium on debt obligations must be amortized (i) to call price at the next call date or (ii) to par value at maturity if there is no call date.

g. The constant yield method must be used for amortization of both discount and premium.

h. In determining the amount to be amortized, discount and premium must be amortized as if the fund had been amortizing the discount or premium from the date on which the obligation was acquired by the income fund.

2. The following rules apply to the treatment of discount and premium on mortgage-backed securities.

a. Gain or loss attributable to actual monthly mortgage paydowns must be treated as an increase or decrease to interest income during the period.

b. An income fund may elect (i) to amortize the discount and premium on the remaining security to the weighted average maturity date, if available, or to the remaining term of the security, if the weighted average maturity date is not available, or (ii) to not amortize discount or premium on the remaining security.

3. Equalization accounting may not enter into the calculation of yield.

4. Expenses paid pursuant to a plan adopted under Investment Company Act Rule 12b–1 must be included in the expenses of the fund. However, such expenses may be reduced (but not below zero) by income received pursuant to the plan.

5. The determination of yield must reflect all fees, other than nonrecurring account charges, that are charged directly to all shareholder accounts in proportion to the length of the base period and the income fund's average account size. Income funds that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

6. Undeclared earned income, computed in accordance with an income fund's normal accounting policies, may be subtracted from the maximum offering price.

7. The determination of yield must reflect the maximum sales load charged on the reinvestment of dividends.

II. The only distribution or performance number, other than:

(i) a yield quotation calculated in the manner described above,

(ii) a tax equivalent yield calculated in a manner consistent with the calculation of yield or

(iii) a total return number,

that may be included in a communication is a figure based on actual distributions. Such distribution figure may only be included in a communication under the following conditions.

a. The distribution figure is calculated as follows:

actual distributions per share over a twelve month period made by the fund from income, short-term capital gains and long-term capital gains that would have been short-term capital gains but for 60/40 treatment under I.R.C. Section 1256(a)
  divided by
the maximum offering price on the last day of the period.

Notes

1. The determination of the distribution figure must reflect all fees, other than nonrecurring account charges, that are charged directly to all shareholder accounts in proportion to the length of the base period and the income fund's average account size. Income funds that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

2. If an income fund has not been in existence for a twelve-month period, it may annualize a three, six or nine-month period (whichever is the longest period available) by multiplying the results of that period by 4, 2 or 4/3, respectively. However, a distribution figure computed in such manner must be accompanied by appropriate disclosure.

b. A distribution figure may only be included in a communication that also contains a yield quotation. Such yield quotation must be identified in the communication as "based on industry formula."

i. An income fund that has as its principal investment objective the production of current income primarily through investment in debt obligations or through investment in debt obligations and writing options on such securities may not give the distribution figure greater prominence than the yield quotation.

ii. An income fund that has as its principal investment objective the production of current income primarily through investment in equity securities and writing options on such securities must disclose the fund's yield

in type no smaller than the predominant type size used in the text of the communication.

c. To the extent that material components of the distribution figure and, if material, accounting principles differ from the components of or accounting principles used to derive the yield quotation, such components or accounting principles must be disclosed. In addition, material risks associated with investment strategies used to produce the additional components must be appropriately disclosed. Such disclosures must be in type no smaller than the predominant type size used in the text of the communication.

d. Notwithstanding the requirements of this section, an income fund may include illustrations of performance other than a yield quotation or total return in supplemental sales literature as long as the illustrations are not misleading and, if the sales literature is not a report to shareholders subject to Section 30(d) of the Investment Company Act of 1940, the requirements of paragraphs b and, if apposite, c of this section are met with respect to the illustrations. For these purposes, a yield quotation will be deemed to be given equal prominence with an illustration if it is prominently disclosed.

III. Communications must include disclosure in the predominant type size used in the text that the yield of the fund will fluctuate.

IV. Communications must include disclosure in the predominant type size used in the text that the share price will fluctuate and must show in the same type size the beginning and ending per-share net asset values for the twelve-month period ending on the last day of the base period used for the yield calculation, or the life of the fund if less.

V. If the expenses of the fund are voluntarily subsidized by its investment adviser or principal underwriter, the fact of such subsidization must be disclosed.

VI. The type size of any footnote may not be smaller than the smaller of 75 percent of the predominant type size used in the text or 10 point type.

VII. Mutual funds that charge nonrecurring fees other than front end sales loads, such as contingent deferred sales loads, redemption fees or one-time account set-up charges, must disclose the maximum fee that will (or, in the case of a contingent charge, may) be charged and that the fee will (or may) reduce the advertised yield.

VIII. Any performance or distribution number, e.g., a yield quotation, total return or a distribution figure, must be as of the most recent practicable date considering the type of fund and the media through which the number will be conveyed.

Communications To Investors Concerning Income Funds—An Explanation of the Proposal

Introduction

The proposal applies to all communications subject to Securities Act Rule 156 (e.g., written advertisements and supplemental sales literature and oral communications) containing yield or similar quotations by certain income funds unless the only such number is a total return number. The income funds covered by the proposal are those funds (other than money market funds) that produce current income primarily through investment in debt obligations or writing options on securities. The covered funds include government and corporate bond funds, bond funds writing options to supplement income and equity option income funds. The proposal does not apply to balanced funds, equity income funds or corporate cash funds.

The proposal permits income funds to advertise yield only if the yield figure is calculated in accordance with the accounting and other principles set forth in the proposal. Therefore, yield is not based on actual distributions, which are determined in accordance with a fund's own accounting and distribution principles.

The reason a standardized yield formula was chosen, rather than basing the yield quotation on actual distributions, was to ensure that income funds with the same portfolios and the same expenses advertise the same yield and, thus, that investors are able to compare the yields of similar funds. The only other way to standardize yield quotations, and thus ensure comparability, would be for the Securities and Exchange Commission to dictate accounting and distribution principles.

Under the proposal income funds are also permitted to include in covered communications containing yield quotations a second number based on actual distributions, provided that for income funds other than equity options income funds, that number is not given greater prominence in the communication than the yield quotation. The distribution figure might differ from the yield quotation because different accounting principles are used to derive it, distributions are made from sources other than dividends and interest, or the fund does not distribute all of its current income.

Pursuant to the proposal, the performance or distribution figures an income fund may include in an advertisement are a yield quotation (calculated in accordance with the proposal), a taxable yield equivalent (calculated in a manner consistent with the calculation of yield), a distribution figure (calculated in accordance with the proposal) and total return (the proposal does not affect the ability of an income fund to advertise total return in any covered communication). Other illustrations of performance may be included in supplemental sales literature as long as certain conditions are met.

Other principles included in the proposal apply to disclosures accompanying a yield quotation. These incorporate the principles adopted by the Board of Governors of the Investment Company Institute in its January 15th resolution regarding advertisements by income funds.

An explanation of each portion of the proposal follows. Each portion of the proposal is printed in smaller type. Commentary on each portion is printed in larger type.

* * * * *

The following principles apply to any communication (whether in writing, by radio, or by television) that (1) contains a yield quotation or other performance or distribution figure, unless the only such figure is total return, and (2) is used by any person to offer to sell or induce the sale of securities of any income fund. For purposes of this document, an income fund is any mutual fund (other than a money market fund) that has as its principal investment objective the production of current income primarily through investment in debt obligations or writing options on securities.

The proposal applies not only to omitting prospectuses subject to Securities Act Rule 482, but also to other communications that are subject to Securities Act Rule 156. The proposal applies to supplemental sales literature, as well as to Rule 482 advertisements in order to apply to the characteristic forms of advertising by both load funds and no-load funds.

The proposal applies to oral, as well as, written communications. However, the proposal does not attempt to identify the specific communications that are covered, but rather adopts the language of Rule 156.

The proposal applies to a communication only if the communication contains a yield quotation or other performance or distribution figure unless the only such number is a total return number. The effect of this is to prohibit income funds from using in an advertisement any number based on distributions, earnings or performance other than the numbers described in the proposal (yield, taxable yield and a distribution figure) or total return and from using in supplemental sales literature a yield quotation that is not calculated in the manner set forth in the proposal.

* * * * *

The first principle sets forth the formula for calculating yield that must be used to calculate any yield quotation subject to the proposal.

I. Any quotation of an income fund's yield must be two times [the following fraction plus one raised to the ½ (365/30) power (if the

period is 30 days) or raised to the sixth power (if the period is one calendar month) minus one]:

Seven and thirty day base periods for measuring income upon which to base the yield quotation were considered. A seven day base period is commonly used for funds other than mortgage-backed securities funds. Some mortgage-backed securities funds use a 30 day base period because income is generally received on a monthly basis. In order that all funds will use the same period, a 30 day base period was chosen for both mortgage-backed securities funds and other income funds. However, because not all income funds will be able to calculate a yield number for thirty day periods that do not coincide with a month, the proposal would permit funds to use either a thirty day or a calendar month base period for measuring income.

Pursuant to the proposal, yield is presented in bond equivalent form, i.e., income is compounded over a six month period and multiplied by two. Bond equivalent form was chosen to provide comparability with the yields on the instruments typically represented in the portfolio of income funds. It should be noted that the yield quoted on competing bank instruments is compounded over a twelve month period.

dividends and interest earned during the period
minus
expenses accrued for the period (net of reimbursements)

The accrual method of accounting was selected because mutual funds use accrual accounting for other purposes and because income and expenses accrued during a thirty day or one month period do not fluctuate as much as income actually received and expenses actually paid during that period.

divided by
the average daily number of shares outstanding for the period

Of course, only paid shares, i.e., those shares for which settlement has been made, are included in the denominator.

divided by
the maximum offering price per share on the last day of the period.

An offering price was chosen, rather than a net asset value, because an investor purchasing shares after receiving a covered communication will receive a yield that more closely approximates the result of a formula based on an offering price than the result of a formula based on a net asset value. The offering price on the last day of the period was chosen, instead of the average offering price per share for the period because, if the last price is used, the yield will more closely approximate the return to investors who invest close to the date on which the communication appears than if an average price is used.

Notes

1. The following rules apply to the treatment of discount and premium on obligations other than mortgage-backed securities.

a. Interest must be adjusted for discount and premium, other than market discount on tax-exempt obligations.

Interest is generally adjusted for discount and premium because discount and premium are ordinarily treated as income or expense for tax purposes. Market discount on tax-exempt obligations is not an adjustment to interest because market discount on tax-exempt obligations is not tax-exempt income for tax purposes. The treatment of mortgage-backed securities is explained under Note 2, below.

b. Market discount on debt obligations other than tax-exempt obligations must be amortized to par value at maturity.

c. Market discount on tax-exempt obligations may not be amortized.

Market discount is amortized on most obligations so that the treatment of discount and premium (which is to be amortized) will be symmetrical.

d. Original issue discount on debt obligations must be amortized to par value at maturity.

Original issue discount on tax-exempt and taxable, e.g., corporate, obligations is amortized for tax purposes.

If an obligation issued at a discount is acquired in the secondary market it does not matter, except for tax-exempt obligations, whether the obligation is still considered to have original issue discount. If the obligation is issued at 98 with a par value of 100 and is acquired immediately thereafter for 95, then the obligation can be considered to have two dollars of original issue discount and three dollars of market discount or to have five dollars of market discount. If an obligation is issued at 98 with a par value of 100 and is acquired immediately thereafter for 100, then the obligation can be considered to have two dollars of original issue discount and two dollars of premium or to have no discount or premium. For tax-exempt obligations, the obligation is considered to retain original issue discount for tax purposes. Therefore, in the examples above, both obligations have an original issue discount of two dollars.

e. If the market discount or original issue discount is less than ¼ of 1 percent of the stated redemption price of the obligation at maturity multiplied by the number of complete years to maturity after the obligation is acquired, then the discount may be considered zero.

The proposal permits an income fund to use the Internal Revenue Code's *de minimis* rule for market and original issue discount.

f. Premium on debt obligations must be amortized (i) to call price at the next call date or (ii) to par value at maturity if there is no call date.

Premium must be amortized so that a fund with a portfolio of premium bonds will not quote a higher yield than a fund with a comparable portfolio of non-premium bonds purchased on the same date.

g. The constant yield method must be used for amortization of both discount and premium.

The constant yield method of amortization was chosen over straight line amortization because it more closely approximates market action.

h. In determining the amount to be amortized, discount and premium must be amortized as if the fund had been amortizing the discount or premium from the date on which the obligation was acquired by the income fund.

The purpose of this provision is to make it clear that an obligation must be amortized from the date on which the obligation is acquired by the income fund rather than from the date on which the fund starts to amortize the obligation for purposes of the yield calculation.

2. The following rules apply to the treatment of discount and premium on mortgage-backed securities.

a. Gain or loss attributable to actual monthly mortgage paydowns must be treated as an increase or decrease to interest income during the period.

The proposal requires the gain or loss attributable to discount or premium to be recognized at the time actual payments are made. Therefore, if substantial prepayments are made, then the gain or loss attributable to discount or premium will be recognized quickly. If no prepayments are made, then the gain or loss will be recognized much more slowly.

b. An income fund may elect (i) to amortize the discount and premium on the remaining security to the weighted average maturity date, if available, or to the remaining term of the security, if the weighted average maturity date is not available, or (ii) to not amortize discount or premium on the remaining security.

An income fund is permitted to elect (on a portfolio-wide basis, not on a security-by-security basis) whether to

amortize discount or premium on the outstanding portion of a mortgage-backed security that remains after the receipt of a paydown. Although amortization of premium and discount provides a steadier income stream, such amortization is not required because of the costs involved in making this computation. If a fund chooses to amortize premium and discount on the remaining security, then the amount of premium or discount remaining to be amortized at the time of the next paydown will, of course, be less.

3. Equalization accounting may not enter into the calculation of yield.

The yield formula is based upon the income from a fund's portfolio (i.e., dividends and interest). Therefore, equalization accounting does not enter into the calculation of yield. However, any distributions made from equalization credits that are not a return of capital may be included in the distribution figure.

4. Expenses paid pursuant to a plan adopted under Investment Company Act Rule 12b–1 must be included in the expenses of the fund. However, such expenses may be reduced (but not below zero) by income received pursuant to the plan.

If a fund (rather than the fund's investment adviser or principal underwriter) receives payments under a plan adopted under Investment Company Act Rule 12b–1, then those payments may be used to offset expenses paid pursuant to the plan. However, such payments may not be used to offset other expenses or included in income in excess of the amount of expenses under the plan.

5. The determination of yield must reflect all fees, other than nonrecurring account charges, that are charged directly to all shareholder accounts in proportion to the length of the base period and the income fund's average account size. Income funds that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

Examples of such fees to be subtracted from income are transfer agent or custodian fees if they are charged directly to shareholder accounts, rather than borne by the fund. The purpose of the word "directly" is to make it clear that the phrase does not include fees paid by the investment adviser or principal underwriter.

If an income fund waives all or part of a fee charged directly to shareholder accounts for some shareholders, then the maximum fee charged to any shareholder account should be used for purposes of this calculation.

6. Undeclared earned income, computed in accordance with an income fund's normal accounting policies, may be subtracted from the maximum offering price.

Income funds may subtract from the maximum offering price per share undeclared earned income, computed in accordance with the mutual fund's normal accounting policies. (In computing "earned" income, a fund, of course, would not use equalization accounting.) The purpose of permitting undeclared earned income to be subtracted from the maximum offering price is to permit funds that declare dividends monthly or quarterly to quote a yield similar to that of a fund that declares dividends daily, whose offering price may include little if any undeclared earned income.

7. The determination of yield must reflect the maximum sales load charged on the reinvestment of dividends.

Because the reinvestment of dividends can materially affect the yield to an investor of an income fund, the computation of yield would be required to reflect the maximum sales load charged on the reinvestment of dividends.

II. The only distribution or performance number, other than (i) a yield quotation calculated in the manner described above, (ii) a tax equivalent yield calculated in a manner consistent with the calculation of yield, or (iii) a total return number, that may be included in a communication is a figure based on actual distributions. Such distribution figure may only be included in a communication under the following conditions.

Income funds may advertise a number other than a yield number calculated in the manner described above. In advertisements, such funds may use a number based on actual distributions. A tax equivalent yield is also permitted in advertisements as long as it is calculation is consistent with the yield calculation. Additional illustrations of performance may be used in supplemental sales literature (see paragraph II.d below).

a. The distribution figure is calculated as follows:

actual distributions per share over a twelve-month period made by the fund from income, short-term capital gains and long-term capital gains that would have been short-term capital gains but for 60/40 treatment under I.R.C. Section 1256(a)

divided by

the maximum offering price on the last day of the period.

Since distributions are usually declared in terms of an amount per share, the formula for calculating the distribution figure includes in the numerator distributions per share, rather than including the total amount of distributions by the fund in the numerator and then dividing by the average number of shares outstanding for the period as is done for the yield calculation.

Some funds follow an investment strategy designed to produce earnings from option premiums. Such earnings, which are capital gains under the tax laws, are included in the distribution number. In addition, because short-term capital gains from option writing cannot be distinguished from other short-term capital gains, all distributions from short-term capital gains are included in the distribution figure. Finally, any distribution from long-term capital gains that would have been a short-term capital gains but for 60/40 treatment under I.R.C. Section 1256(a) is included. (Under Section 1256(a), 60 percent of the gain from writing covered call options on debt obligations is converted into long-term capital gain if the taxpayer has made a mixed straddle election; no portion of the gain from writing covered call options on equity securities is converted into long-term capital gain. This distinction in the tax code has not been preserved in the proposal.]

A base period return (such as the return for a thirty-day or one month period) is generally not annualized for the distribution figure as it is for the yield computation. Because of the non-recurring and variable nature of certain sources of earnings and the fact that distributions over a short period may exceed actual earnings during that period, it is preferable to use distributions for an actual twelve-month period, rather than to annualize distributions made over a shorter period.

Notes

1. The determination of the distribution figure must reflect all fees, other than nonrecurring account charges, that are charged directly to all shareholder accounts in proportion to the length of the base period and the income fund's average account size. Income funds that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

2. If an income fund has not been in existence for a twelve-month period, it may annualize a three-six-or nine-month period (whichever is the longest period available) by multiplying the results of that period by 4, 2 or 4/3, respectively. However, a distribution figure computed in such manner must be accompanied by appropriate disclosures.

To permit an income fund that has been in existence for less than a year to advertise a distribution figure, such

funds are permitted to advertise an annualized distribution figure.

b. A distribution figure may only be included in a communication that also contains a yield quotation. Such yield quotation must be identified in the communication as "based on industry formula."

i. An income fund that has as its principal investment objective the production of current income primarily through investment in debt obligations or through investment in debt obligations and writing options on such securities may not give the distribution figure greater prominence than the yield quotation.

ii. An income fund that has as its principal investment objective the production of current income primarily through investment in equity securities and writing options on such securities must disclose the fund's yield in type no smaller than the predominant type size used in the text of the communication.

Income funds may only include a distribution figure in a communication that also contains a yield quotation (unless such communication is a shareholder report, see paragraph II.d below). In addition, the yield quotation must be identified as "based on industry formula" so that an investor can determine which figure is comparable to yield quotations in other communications by income funds.

Equity option income funds, which do not have significant distributable income from dividends and interest, are permitted to include the industry yield figure in the text of a communication. Other income funds may not give the distribution figure greater prominence than the industry yield figure. Therefore, although all income funds can advertise both a yield quotation and a distribution number, the prominence of the two numbers in communications by the two types of income funds may depend upon the type of fund.

c. To the extent that material components of the distribution figure and, if material, accounting principles differ from the components of or accounting principles used to derive the yield quotation, such components or accounting principles must be disclosed. In addition, material risks associated with investment strategies used to produce the additional components must be appropriately disclosed. Such disclosures must be in type no smaller than the predominant type size used in the text of the communication.

Material components of the distribution figure, such as gains on option transactions, and material accounting policies, such as equalization or failure to amortize premium on debt obligations, must be disclosed if they differ from the components of or accounting principles used in the yield computation. In addition, material risks associated with investment strategies used to produce material components of the distribution figure, other than dividends and income, must be disclosed. For example, an option income fund should disclose that writing options could limit the extent of the appreciation that might be recognized by the fund. Such disclosure must be disclosed in the predominant type size used in the text of the communication.

d. Notwithstanding the requirements of this section, an income fund may include illustrations of performance other than a yield quotation or total return in supplemental sales literature as long as the illustrations are not misleading and, if the sales literature is not a report to shareholders subject to Section 30(d) of the Investment Company Act of 1940, the requirement of paragraphs b and, if apposite, c of this section are met with respect to the illustrations. For these purposes, a yield quotation will be deemed to be given equal prominence with an illustration if it is prominently disclosed.

Because supplemental sales literature may be significantly longer than an advertisement subject to Securities Act Rule 482, an illustration of performance in sales literature may be accompanied by sufficiently detailed disclosure to explain its significance. Therefore, supplemental sales literature may contain additional illustrations of performance if (1) the illustrations are not misleading, (2) the illustrations are accompanied by a yield quotation, (3) the sources of earnings for, and the accounting principles used to derive, the illustrations are disclosed if appropriate and (4) the material risks associated with the investment strategies used to produce any additional sources of earnings are appropriately disclosed.

Even though shareholder reports may be viewed as supplemental sales literature, funds are permitted to include illustrations of performance in such reports, e.g., the actual distribution per share for the prior year, as long as the illustrations are not misleading.

This paragraph only modifies Section II of the proposal, therefore, any quotation of yield in a shareholder report or other supplemental sales literature must be calculated in accordance with the rules in Section I of the proposal. If such yield quotation is accompanied by other illustrations of performance then it must be identified as "based on industry formula."

III. Communications must include disclosure in the predominant type size used in the text that the yield of the fund will fluctuate.

IV. Communications must include disclosure in the predominant type size used in the text that the share price will fluctuate and must show in the same type size the beginning and ending per-share net asset values for the twelve-month period ending on the last day of the base period used for the yield calculation, or the life of the fund if less.

The purpose of these principles is to educate investors as to the nature of the income fund. In addition, the latter principle requires coordination between the period for which beginning and ending net asset values are shown and the base period used for the yield calculation—that is the last day of both periods is the same.

V. If the expenses of the fund are voluntarily subsidized by its investment adviser or principal underwriter, the fact of such subsidization must be disclosed.

This principle requires funds for which expenses are temporarily, voluntarily subsidized by the fund's investment adviser or principal underwriter to disclose that fact.

VI. The type size of any footnote may not be smaller than the smaller of 75 percent of the predominant type size used in the text or 10 point type.

This principle requires footnotes to be in an easily readable type size.

VII. Mutual funds that charge nonrecurring fees other than front end sales loads, such as contingent deferred sales loads, redemption fees or one-time account set-up charges, must disclose the maximum fee that will (or, in the case of a contingent charge, may) be charged and that the fee will (or may) reduce the advertised yield.

The proposal requires disclosure of the maximum deferred sales load that may be charged and of the fact that such sales load will (or may, if the sales load is contingent) reduce the advertised yield. Such disclosure informs investors that their actual yield on the shares may not equal the advertised yield even if the fund's performance does not change. Disclosure of the actual maximum sales load should assist investors in determining the magnitude of the impact of the deferred sales charge on yield.

VIII. Any performance or distribution number, e.g., a yield quotation, total return or a distribution figure, must be as of the most recent practicable data considering the type of fund and the media through which the number will be conveyed.

A rigid period has not been established beyond which a number is stale. Because the necessary lead time for different media varies greatly, week old yield quotations might be stale for a particular newspaper while a month old yield quotation might not be stale for a given magazine. Moreover, even for the same medium, different income funds might need to use different base periods because an income fund holding mortgage-backed securities might not know the mortgage paydowns for a

particular month until a week after the end of that month, while a bond fund might be able to calculate its yield immediately after the end of the month. Finally, although radio commercials or cards given to brokers could be updated daily, the expense of changing the yield quotations in radio advertisements or on broker cards could make such updating impractical. Therefore, calculations are required to be as of the most recent date practicable, rather than as of a specific date.

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Federal Register

Friday
September 26, 1986

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Nashville Crayfish, Ko'oloa'ula, Three Florida Shrubs, Alabama Leather Flower, and Dismal Swamp Southeastern Shrew; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Nashville Crayfish (Orconectes shoupi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The service determines the Nashville crayfish (*Orconectes shoupi*) to be an endangered species under the Endangered Species Act of 1973 (Act), as amended. This species is currently known to exist only in the Mill Creek basin in Davidson and Williamson Counties, Tennessee. The species is threatened by siltation, stream alterations, and general water quality deterioration resulting from development pressures in the urbanized areas surrounding Nashville, Tennessee. The species' limited distribution also makes it vulnerable to a single catastrophic event, such as a toxic chemical spill or other contamination. This determination of endangered species status implements the protection provided by the Act for the Nashville crayfish.

EFFECTIVE DATE: October 27, 1986.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins, at the above address (704–259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The Nashville crayfish (*Orconectes shoupi*), described by Hobbs (1948), is currently known only from Mill Creek and five of its tributaries in Davidson and Williamson Counties, Tennessee (O'Bara 1985, Bouchard 1984). The land along these watercourses are in private or municipal (City of Nashville) ownership. Historic collection records indicate that the Nashville crayfish has been taken from three other Tennessee localities: (1) Big Creek (Elk River system), Giles County; (2) South Harpeth River (Harpeth River system), Davidson County; and (3) Richland Creek (a Cumberland River tributary), Davidson County.

The three historic localities outside the Mill Creek drainage were surveyed as part of a recently completed Service funded status survey (O'Bara 1985), but the Nashville crayfish was not found. O'Bara (1985) also surveyed crayfish populations at 96 other sites outside the Mill Creek watershed and found no additional Nashville crayfish populations. Bouchard (1976, 1984) collected extensively in the Nashville basin and elsewhere in Tennessee, but was unable to find the species outside of the Mill Creek watershed.

The Nashville crayfish, which attains a length of over 6 inches (15 centimeters), has been observed to inhabit pools and riffle areas with moderate current. Very little is known concerning the species' biology, but, like related crayfish, it probably feeds on vegetation fragments and animal matter. Reproduction occurs in the winter months, and females have been observed carrying eggs in the spring. The species' restricted range makes it vulnerable to toxic chemical spills. The species is also subjected to water quality and other habitat deterioration associated with urban runoff, land disturbance, and development within the Mill Creek watershed. A flood control project being planned for the Mill Creek basin by the U.S. Army Corps of Engineers (COE) could also impact the species, although it is not likely that this project, as currently planned, would jeopardize the species' continued existence.

The Nashville crayfish was proposed for listing as an endangered species on January 12, 1977 (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796), under provisions of the 1978 amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within two years of being proposed or within one year after passage of the amendments, whichever date came later. A notice of review was published on May 22, 1984 (49 FR 21664), announcing that the Service considered the Nashville crayfish a potential candidate for Endangered Species Act protection. On January 3, 1985, the Service notified Federal, State, and local governmental agencies and interested parties that the Service was reviewing the species' status. That notification requested information on the species' status and threats to its continued existence.

Three agencies, (1) U.S. Department of the Army, Corps of Engineers, Nashville District (COE), (2) Tennessee Valley Authority (TVA), and (3) Federal Energy Regulatory Commission (FERC), provided comments. COE informed the Service that it was conducting a flood protection study of Mill Creek. TVA and FERC stated that they were unaware of any of their projects that would be affected by listing the species.

Summary of Comments and Recommendations

In the January 24, 1986, proposed rule (51 FR 3229) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted (the City of Nashville, Mayor's Office; U.S. Army Corps of Engineers; Tennessee Wildlife Resources Agency; and Tennessee Department of Conservation were also contacted in person or by phone) and requested to comment. A newspaper notice that invited general public comment was published in the *Nashville Banner* and the *Nashville Tennessean* papers on February 17, 1986. A news release summarizing the proposed rule and requesting comments was also provided to newspapers in Tennessee. Seven comments were received and are discussed below.

COE (two comments), Tennessee Wildlife Resources Agency (TWRA), Tennessee Department of Conservation, and a private individual responded that they supported the proposed rule. COE also provided additional biological information on the species and related this information to potential impacts of its proposed flood control projects. TWRA further stated:

> Since USFWS [the U.S. Fish and Wildlife Service] announcement of the proposal . . . it has received widespread coverage in Nashville newspapers and television, including at least two TV interviews with our agency personnel. To my knowledge, we have not received negative comments on this proposal to date.

The U.S. Department of Housing and Urban Development stated that it had "no project activities that would affect the proposed listing." The Federal Energy Regulatory Commission concluded that listing the crayfish would have no effect on any hydroelectric projects under its jurisdiction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Nashville crayfish should be classified as an endangered species. Procedures found at section 4(a)(1) of

the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Nashville crayfish *Orconectes shoupi)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Results of recent studies indicate that the Nashville crayfish is restricted to Mill Creek and five of its tributaries in Davidson and Williamson Counties, Tennessee. The species has previously been reported from three other watersheds but has not been collected from these areas in recent years (O'Bara 1985, Bouchard 1976, 1984), as discussed in the Background section.

The species is endangered by water quality deterioration from development within the watershed. According to a COE report (COE 1984), about 40 percent of the Mill Creek watershed has been developed. The lower watershed lies within the highly urbanized Nashville, Tennessee, metropolitan area. The Tennessee Department of Public Health (TDPH) (1978) characterized this area of Mill Creek as follows: "The stream's main problem stems from urban commercialization that is gradually overtaking the whole watershed." The TDPH also reported that the diversity of organisms in Mill Creek, ". . . does not look good. The number of taxa found was severely limited and decreased as one moved downstrem." The upper portion of the Mill Creek watershed has less residential and industrial development, but agricultural activity is extensive. COE (1981) concluded that the uppermost segment of Mill Creek was degraded by organic enrichment and had very poor water quality. In that same report, COE stated that, "biological communities inhabiting Mill Creek during the 1981 survey indicated water of fair to very poor quality and the influence of moderate to extensive enrichment and disturbance." Threats to the species could also come from other activities in the watershed such as road and bridge construction, stream channel modifications, impoundments, land use changes, and other projects, if such activities are not planned and implemented with the survival of this geographically restricted species in mind.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Crayfish are frequently taken in the southeastern United States for food or bait. Overutilization for these purposes could become a problem if the species' specific habitat were identified to the extent required for designation of critical habitat.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* Tennessee State law provides limited protection for this species by requiring a State permit to collect crayfish for scientific purposes. However, there is currently no State law that provides specific protection for the species' habitat. Federal listing will provide additional protection for the species by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect a listed species.

E. *Other natural or manmade factors affecting its continued existence.* The Nashville crayfish's restricted range makes it very vulnerable to a single catastrophic event, such as a chemical spill. COE (1984) reported that occasional spills and discharges have occurred along Mill Creek in the past.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Nashville crayfish as endangered. The crayfish's restricted range, along with pressure on the species and its remaining habitat from the rapid development of the Mill Creek basin, makes the species in danger of extinction at the present time; therefore, threatened status is inappropriate. Critical habitat designation (see Critical Habitat section below) would not be prudent for the Nashville crayfish, as defining its exact range and specific habitat could further endanger the species by increasing the incidence or illegal take or vandalism. A decision to take no action would exclude the Nashville crayfish from needed protection available under the Endangered Species Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Crayfish are frequently taken in the southeastern United States for food or bait. Much of the Nashville's habitat is adjacent to a large human population. Human interest in the species is expected to increase as a result of this final rule and subsequent Federal actions. The Service believes a detailed description of the species' habitat, including maps and text detailing the crayfish's specific habitat and constituent elements of that habitat, as required for any critical habitat designation, would increase the species' vulnerability to illegal taking and/or vandalism, increase the law enforcement problem, and further endanger the species. Therefore, it is not prudent to designate critical habitat for this species at this time. Doing so would draw attention to the Nashville crayfish and thereby increase the intensity of threats to its populations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402 and were recently revised at 51 FR 19926 (June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorized, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service is aware of only one Federal project that may affect the species. COE is proposing to construct two flood control facilities in the Mill Creek watershed. The Service and COE have conferred regarding these projects,

and the Service has concurred with COE's determination that the projects, as planned, are not likely to jeopardize the species' continued existence. This conference report will become the basis of the Service's formal biological opinion when the species is listed if no new information becomes available and if no significant project changes are made. Other Federal activities that could impact the species and its habitat include, but are not limited to, the carrying out of, or the issuance of permits for, hydroelectric development, reservoir construction, stream alteration, wastewater facility development, or road and bridge construction on Mill Creek or its tributaries. It has been the experience of the Service, however, that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered is such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bouchard, R.W. 1976. Investigations on the status of fourteen species of freshwater decapod crustaceans in the United States Part I. Troglobitic shrimp and western North American crayfishes. Report to Office of Endangered Species, Department of the Interior. 26 pp.

Bouchard, R.W. 1984. Distribution and status of the endangered crayfish *Orconectes shoupi* (Decapoda: Cambaridae). U.S. Fish and Wildlife Service, Tennessee Cooperative Fishery Research Unit, Tennessee Tech University, Cookeville, Tennessee. 27 pp.

Hobbs, H.H., Jr. 1948. On the crayfishes of the Limosus section of the genus *Orconectes* (Decapoda, Astacidae). Journal of the Washington Academy of Science 38(1): 14–21.

O'Bara, C.J. 1985. Final report; status survey of the Nashville caryfish (*Orconectes shoupi*). Report to U.S. Fish and Wildlife Service, Asheville, North Carolina. 17 pp.

Tennessee Department of Public Heath. 1978. Mill Creek survey, Davidson County, Tennessee. Tennessee Department of Public Heath, Divison of Water Quality Control, Nashville Basin. Unpublished report. 7 pp.

U.S. Army Corps of Engineers, Nashville District. 1981. Water quality along Mill Creek. Nashville, Tennessee. 35 pp.

U.S. Army Corps of Engineers, Nashville Distict. 1984. Mill Creek, Wimpole Drive areas, Nashville, Davidson County. Tennessee. Final detailed project report and environmental assessment. 331 pp.

Author

The primary author of this final rule is Richard G. Biggins, Asheville Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read a follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CRUSTACEANS" to the List of Endangered and Threatened Wildlife;

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h)* * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Crayfish, Nashville	*Orconectes shoupi*	U.S.A. (TN)	NA	E	242	NA	NA

Dated: September 12, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–21755 Filed 9–25–86; 8:45]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Abutilon menziesii (Ko'oloa'ula)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Abutilon menziesii* (Ko'oloa'ula) to be an endangered species. This plant is known from only three small populations located on the islands of Lanai, Maui, and Oahu, in the State of

Hawaii. These populations are vulnerable to any substantial habitat alteration and face threats of fire, flood, overgrazing by feral animals, and predation by the Chinese rose beetle. This determination that *Abutilon menziesii* is an endangered species implements the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: October 27, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE., Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Abutilon menziesii was first collected by Dr. Archibald Menzies while in Hawaii with Captain George Vancouver aboard the "Discovery" in 1790–1795. In 1865, B. C. Seemann found Menzies' collection in the British Museum of Natural History, London. Seemann described the plant and named it for Dr. Menzies. The exact locality of Menzies' collection is unknown as the collection site was listed simply as "The Sandwich Islands." The plant is a shrub, 6–8 feet (2–2.5 meters) tall, with coarsely-toothed, silvery, heart-shaped leaves 1–3 inches (2–8 centimeters) long. The flowers are medium red to dark red and about 0.8 inch (2 cm) across. The capsules are hairy and five to eight-parted, with about three seeds per cell.

The species formerly grew on the islands of Hawaii, Maui, and Lanai; today there are about 65 plants growing naturally in the wild. The principal population is on Maui, where additional survey since the species was proposed for listing has located a total of about 32 plants existing at 2 sites. There is also a remnant population on Lanai, consisting of about 34 individuals, and a single plant known from Oahu, which is probably descended from cultivated stock. The extant populations are threatened by exotic animals (e.g. axis deer, Chinese rose beetle), soil erosion, fire, flood, and commercial development. The most recent imformation provides no reason for the Service to change its evaluation of the endangered status of *Abutilon menziesii*.

Federal actions involving *Abutilon menziesii* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of Section 4(c)(2), of the Endangered Species Act (petition acceptance provisions are now contained in section 4(b)(3)(A))), and giving intention to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Abutilon menziesii* was included in the Smithsonian report, the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was allowed for proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the pending portion of the June 16, 1976, proposal, along with four other proposals that had expired. *Abutilon menziesii* was included as a category 1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service has sufficient biological information on hand to support their being proposed for listing as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Findings were made on October 13, 1983, and again on October 12, 1984, that listing *Abutilon menziesii* was warranted, but precluded by pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. An additional petition finding required in accordance with section 4(b)(3)(B)(ii) of the Act was incorporated in the proposed rule for this species. Based on information summarized in a detailed status report prepared under contract by University of Hawaii botanists (Funk and Smith 1982), the Service proposed to list *Abutilon menziesii* as an endangered species on July 16, 1985 (50 FR 28876).

Summary of Comments and Recommendations

In July 16, 1985, proposed rule (50 FR 28876) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Maui News* on August 18, 1985, in the *Honolulu State Bulletin* on August 20, 1985, and in the *Honolulu Advertiser* on August 21, 1985. Six letters of comment were received and are discussed below. A public hearing was requested and held in Kahului, Maui, Hawaii, November 5, 1985. The comment period was reopened following the public hearing, closing again December 9, 1985 (50 FR 42196). Three people testified; their testimony is included in the following summary.

Seven of the eight comments and testimonies received stated support for listing *Abutilon menziesii* as an endangered species; these included two State agencies and five individuals or groups.

The eighth comment, from one of the land-owning companies, stated that *Abutilon menziesii* has been identified as a pest to sugar cane, and that this company, as well as other sugar plantations, has been attempting to eradicate the plant from its fields for many years. The commenter cited evidence that cattle will not eat the ko'oloau'la, and reasoned that there is little danger to the plants from the present pasture use of the gulch where the plant grows. However, the company advocated removal of the remaining wild plants from its lands to cultivation in botanical gardens. The commenter further noted the recent discovery that there are more plants on the island of Maui than the two plants mentioned in the proposed rule.

In response, the Service has confirmed that the landowner mistook the common introduced weed, *Abutilon grandifolium (A. molle)*, which has been identified as a pest in sugar cane fields, for *A menziesii*. Although it is correct that *A. menziesii* itself is not a preferred food of cattle, they are known to eat it during time of drought when food is scarce. The population on the island of Hawaii reportedly was completely destroyed by cattle during an unusually dry year.

Most of the plants on Maui grow in drier areas, where overgrazing often occurs. Although the service will consider moving individuals to cultivation in order to save them from being destroyed, such a salvage operation is a last resort against extinction, and does not conserve the species in the ecosystem on which it depends for normal survival and reproduction. The additional plants on Maui were discovered after the proposed rule was completed and sent out for publication; 32 of the about 65 known plants are from that island.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Abutilon menziesii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Abutilon menziesii* Seemann (ko'oloa'ula) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Abutilon menziesii* has been described by collectors from several localities. A recorded population of this species on the island of Hawaii has disappeared completely. The species is now reduced to about 65 individuals on the islands of Lanai, Maui, and Oahu. The Lanai population is now found only at one very small peripheral site, whereas it previously had been recorded from at least six different localities. Only 32 plants are found on Maui, and the Ohau population consists of a single individual, thought to have come from introduced stock.

Much of the land where *Abutilon menziesii* had occurred has been cleared for cultivation (pineapple and sugar cane) or pasture, with the land often abandoned in later years. Erosion has been and continues to be a major threat to *Abutilon menziesii*. The Lanai population is in an area that is quite heavily eroded and the Maui population maintains a tenuous existence in gulches subject to erosion and grazing. All known populations are frequently exposed to severe drought and perodic flooding. Flooding increases the erosion and threatens the existing populations. Also, the drought conditions often lead to wildfires that could destroy any of the existing populations. Overgrazing by axis deer, cattle, and goats also aggravates the erosion problems. Development for housing and commercial use is a continuing threat. The site where the Oahu plant grows will almost certainly be developed in the future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although *Abutilon menziesii* is not greatly sought after by collectors, the species is occasionally used in ornamental plantings. Since the population has been reduced to about 65 individuals, any collecting for commercial or scientific use could be significant.

C. *Disease or predation.* Browsing by cattle, goats, and axis deer is primarily responsible for decline of *Abutilon menziesii* and may prevent the reestablishment of the species. Cattle browsing has been a major problem and is evidently responsible for the disappearance of the plant from the island of Hawaii. Axis deer apparently pose the major threat to the plants currently existing on Lanai.

The Chinese rose beetle (*Adoretus sinicus*) has also been documented to defoliate the plants. Since the plants produce new leaves only during a flush growth period in the wet season, such defoliation has a significant negative impact on the survival of the species.

D. *The inadequacy of existing regulatory mechanisms.* There are no State laws or existing regulatory mechanisms at the present time to protect *Abutilon menziesii* or prevent its further decline. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continuing existence.* The small number of surviving plants growing in small areas makes this species very susceptible to extinction because small fluctations in any of several environmental factors could have a devastating effect. A single fire or flood on Lanai could wipe out the population of *Abutilon menziesii* there. Loss of genetic variability is likely in a population of such low numbers. The decline of many native insect pollinators, especially *Nesoprosopis* bees, may pose an additional threat, although the flowers now are frequently visited by introduced insects.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Abutilon menziesii* as endangered. Its decline in numbers to approximately 65 individuals and reduction in range to 4 sites indicate the appropriateness of listing this species as endangered. It is not prudent to propose critical habitat because doing so would increase risk for the species, as detailed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to be the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. *Abutilon menziesii* has been reduced to four populations and about 65 individuals in a limited geographical range. Any publication of critical habitat descriptions giving the localities of these populations could result in collecting or vandalizing at the sites.

All but six of the individuals are on private land and minimal benefit to the species would accrue from designating critical habitat. Therefore, it would not be prudent to determine critical habitat for *Abutilon menziesis* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried our for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Revised regulations implementing this interagency cooperation provision of the Act were published on June 3, 1986 (51 FR 19926), and will be codified at 50 CFR Part 402.

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There is no known Federal involvement affecting *Abutilon menziesii,* since all plants, with the exception of six individuals on State property, occur on private land. Protection of this species and its habitat will require cooperation among private landowners, the State of Hawaii, the County of Maui, and the U.S. Fish and Wildlife Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued for *A. menziesii,* since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Malvaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Malvaceae—Mallow family:						
•	•	•	•	•	•	•
Abutilon menziesii	Ko'oloa'ula	U.S.A. (HI)	E	243	NA	NA
•	•	•	•	•	•	•

Dated: September 12, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-21754 Filed 9-25-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Florida Shrubs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Deeringothamnus pulchellus* (beautiful pawpaw), *Deeringothamnus rugelii* (Rugel's pawpaw), and *Asimina tetramera* (four-petal pawpaw) to be endangered species pursuant to the Endangered Species Act of 1973 (Act). *Deeringothamnus pulchellus* is restricted to Pine Island, Lee County and Charlotte County, Florida. *Deeringothamnus rugelii* is known from Volusia County, Florida. Both species of *Deeringothamnus* are endangered by the destruction of their habitats for residential, commercial, and agricultural purposes. *Asimina tetramera* inhabits scrub vegetation on dunes near the Atlantic coast in Martin and Palm Beach Counties, Florida. It is endangered by destruction of its habitat for commercial and residential construction, and by successional changes in its habitat. This rule will implement the protection and recovery provisions afforded by the Act for these three shrubs.

EFFECTIVE DATE: The effective date of this rule is October 27, 1986.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

These three species of pawpaw are shrubs of the custard-apple family (Annonaceae), a family that includes a dozen trees and shrubs of the southwestern United States. John K. Small (1924) established the genus *Deeringothamnus* to accommodate the newly-discovered *D. pulchellus*, which differs from *Asimina* in several features of the flowers. He later transferred *Asimina rugelii* to *Deeringothamnus*. Rehder and Dayton (1944) and Wilbur (1970) merged *Deeringothamnus* into *Asimina* but the distinctness of *Deeringothamnus* has been upheld in studies by Kral (1960) and Walker (1971). A recent study of leaf anatomy in the Annonaceae shows *Deeringothamnus* to be very distinctive (John L. Roth, Jr., University of Massachusetts, pers. comm. July 1984). The genus *Deeringothamnus* consists of only the two Florida endemic species covered here. Both species inhabit poorly-drained slash pine-saw palmetto flatwoods. They are low shrubs with stout taproots. The leaves are oblong and leathery. The fruits are cylindrical berries with pulpy flesh, 3–6 centimeters (1–3 inches) long, and yellow-green when ripe. Seeds are about the shape and size of brown beans. The annual or biennial stems are 10–20 centimeters (4–8 inches) tall. The plants resprout readily from the roots after the tops are destroyed by fire or mowing. The absence of such disturbance leads to the eventual demise of *Deeringothamnus* (Norman and Brothers 1981).

Deeringothamnus pulchellus has flowers with linear, creamy white petals that are straight when the flower opens, becoming recurved. The flowers are pleasantly scented. J.K. Small (1926a) coined the whimsical common name of "squirrel banana." It was discovered "in the uninhabited pineland wilderness between Punta Gorda and Fort Myers" (Small 1924), probably near Tuckers Corner in what is now the Cecil M. Webb Wildlife Management Area (L. Campbell, Webb Area manager, pers. comm. March 1985). Subsequently, it was found at several sites in southern Charlotte County and in Lee County near Fort Myers (Wunderlin *et al.* 1981). Despite searches by botanists, *Deeringothamnus* has not been collected in these sites since the 1950's. Urbanization has destroyed several known sites in the Fort Myers area. A population has been known on Pine Island, Lee County, Since 1930, where this species presently is known from Immokalee sand and Punta fine sand soils in grassy flatwoods. It is relatively abundant on road edges and partly developed subdivision lots that are occasionally mowed, but where chopping or other soil disturances have not occurred. A second population is known from grassy flatwoods and a road edge on Myakka fine sand soil along county highway 765 near Pirate Harbor in southern Charlotte County (R.W. Repenning, report to Florida Natural Areas Inventory, May 2, 1985). Until recently, the flatwoods inhabited by *Deeringothamnus* were kept relatively free of large shrubs and saw palmetto by frequent ground fires. With the coming of development, fires were controlled and mechanical means have been used to clear and maintain open areas. Infrequent mowing of undeveloped lots and road edges has replaced fire as an acceptable means of removing larger shrubs that can shade out *Deeringothamnus*. Frequent low mowing would prove detrimental.

Deeringothamnus rugelii has flowers with straight, oblong, canary yellow petals. It was first collected by Ferdinand Rugel in 1848. It was not validly described as a species until B.L. Robinson published the name *Asimina rugelii*, based on Rugel's specimens, in 1897. J.K. Small rediscovered this plant in 1924, assigned it to his genus *Deeringothamnus*, and called it the "yellow squirrel banana" (Small 1930). The next collections were made by R. Kral in 1956 and 1958 (Wunderlin *et al.* 1980). The present distribution of these plants has been determined by Norman and Brothers (1981). They found seven populations containing a total of fewer than 500 plants. About half of the plants were in pine flatwoods used for cattle pasture. Most of the rest were in a powerline right-of-way and a recently-burned flatwoods. All of these populations are in southern Volusia County, Florida. One population is 12 miles southwest of New Smyrna Beach. The rest are in an area of about 3 square miles, about 5 miles west of the center of New Smyrna Beach.

Asimina tetramera is a large shrub or small tree, 1–3 meters (3–9 feet) tall, with one to several upright main stems. The flowers have 4 sepals (occasionally 3 or 5), and usually 6 petals in 2 sets of 3 each. The petals are pink to maroon, and the flowers have a fetid odor. The four-petal pawpaw inhabits sand pine scrub on old dunes inland from the present Atlantic coast in Martin and northern Palm Beach Counties. It was discovered by J.K. Small in 1924 at Rio, just north of Stuart and was subsequently named by him (Small 1926b). Small (1933) placed six species of *Asimina*, including *A. tetramera*, in a new genus, *Pityothamnus*. This genus has been rejected by other taxonomists (Kral 1960). *Asimina tetramera* responds well to the occasional severe fires and hurricane damage that typify its habitat, because new sprouts grow readily from the roots. In the absence of such disturbance, *Asimina tetramera* is usually shaded out by evergreen oaks and sand pines. Most of its habitat has been destroyed by urban development (Austin and Tatje 1979, Austin *et al.* 1980). As few as 200 plants exist in the wild at the present time (R. Moyroud; Mesozoic Landscapes, Inc., pers. comm. 1985). Over 100 plants were destroyed through land development in 1984 alone (P. Quincy, Florida Power and Light, pers. comm. December 10, 1984).

Federal Government actions on these species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In this report, *Asimina tetramera* was considered as endangered, and *A. pulchella* and *A. rugelii* (as they were then called) were considered threatened. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Asimina tetramera* was included in the proposed rule. The 1978 Endangered Species Act Amendments required the withdrawal of all proposed rules over two years old, except that a 1-year grace period was allowed for proposals then already over two years old. On December 10, 1979, the Service withdrew that portion of the June 16, 1976, proposal that had expired (44 FR 70796). On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included

Asimina tetramera and *Deeringothamnus rugelii* as category-1 candidates (species for which data in the Service's possession indicate listing is warranted). *Deeringothamnus pulchellus* was included as a category-2 candidate (species for which data in the Service's possession indicate listing is possibly appropriate but for which additional biological information is needed to support a proposed rule). One comment on *Deeringothamnus* was received in response to the 1980 plant notice, favoring action to ensure the survival of these species. On November 28, 1983, the Service published in the Federal Register (48 FR 53640) a supplement to the 1980 notice of review, which upgraded *Deeringothamnus pulchellus* to a category-1 candidate, based on field work by Wunderlin *et al.* (1981). All three species were included as category-1 species in the Service's September 27, 1985 (50 FR 39526), updated Notice of Review of Plant Candidates.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Asimina tetramera* and for both species of *Deeringothamnus* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, the Service found that the petitioned listing of these three species was warranted, and that, although other pending proposals had precluded their proposal, expeditious progress was being made to list these species. Publication of the proposal to list these species on November 1, 1985, constitutes the next 1-year finding requirement that would have been due October 13, 1986.

In the proposed rule, *Asimina tetramera* was proposed to be listed as threatened. The Service now believes, based on information received during the comment period, that endangered status is appropriate.

Summary of Comments and Recommendations

In the November 1, 1985, proposed rule (50 FR 45634) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Stuart News*, *Fort Myers News-Press*, and *Daily Herald-News* (Punta Gorda) on November 16, 1985; and in the *Palm Beach Post* and *New Smyrna Beach News & Observer* on November 17, 1985. Four communications were received on the proposal. The Lee County Department of Community Development and the Florida Game and Fresh Water Fish Commission supported the proposal. The environmental coordinator for Florida Power and Light Company provided additional information on a tract of land owned by the company and managed to protect *Asimina tetramera*, and on the status of the species on private land. The president of a specialized plant nursery in Delray Beach, Florida, urged that *Asimina tetramera* be listed as an endangered species because of the "very small number of remaining individuals, questionable reproductive success, narrow endemism, and escalating pressure on public and private land use." His comments included information on the reproductive biology of the pawpaw, on a disease which affects the species, on the present distribution of the species, and on the destruction of its habitat over the past several years. This information has been incorporated into the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Deeringothamnus pulchellus* Small (=*Asimina pulchella* (Small) Rehder & Dayton), beautiful pawpaw; *Deeringothamnus rugelii* (B.L. Robinson) Small (=*Asimina rugelli* B.L. Robinson), Rugel's pawpaw; and *Asimina tetramera* Small (=*Pityothmnus tetramerus* (Small) Small), four-petal pawpaw are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The former geographic ranges of the two species of *Deeringothamnus* are somewhat uncertain because few herbarium specimens were ever collected. A single specimen of *Deeringothamnus* that cannot be determined to species, collected at Bithlo, Orange County, Florida in 1929, indicates wider former distributions. Efforts to relocate the Bithlo plants have failed (Norman and Brothers 1981). *Deeringothamnus pulchellus* has disappeared from most of its former range, which included what is now the Fort Myers urban area. The existing populations are quite vulnerable to real estate development (Wunderlin *et al.* 1981), since Fort Myers is one of the fastest-growing urban areas in Florida. *Deeringothamnus rugelli* has declined greatly in numbers since Kral collected specimens in 1956–1958. Real estate development is now a severe threat to this plant because all but one of the populations are within 1 mile of Interstate 95 at New Smyrna Beach. Areas that are not developed may become unsuitable for *Deeringothamnus* due to modification of the vegetation. Both species of *Deeringothamnus* are adapted to grassy flatwoods, where ground fires destroy the above-ground parts of the plants every several years. The plants resprout from the roots. *Deeringothamnus* can tolerate occasional mowing, but disruption of the root system is fatal. *Deeringothamnus rugelii* thrives in flatwoods converted to cattle pasture with bahia grass (*Paspalum notatum*), but conversion of pastures to turf grass farming destroys the plants. Pine plantations, with fire protection and dense understory vegetation, cause *Deeringothamnus rugelii* to be shaded out. One population of *Deeringothamnus rugelii* is threatened by expansion of a cemetery (Norman and Brothers 1981). Also, *Deeringothamnus pulchellus* is affected by trash dumping within part of its range.

Most of the original and pine scrub habitat of *Asimina tetramera* is now urbanized. The species is now restricted to limited remaining areas of scrub, some of them protected. Up to 100 plants exist in Jonathan Dickinson State Park, where the habitat is protected except for small areas used for military communications facilities that could be altered in the future. Some plants have been found on Hobe Sound National Wildlife Refuge; and pawpaw may occur on Refuge land where the Army Corps of Engineers holds easements for disposal of dredge spoils from the Intracoastal Waterway. In addition, approximately 60 plants exist on several acres of scrub that are managed as a biological

preserve on the grounds of an office building in Palm Beach County. Also, a Palm Beach County park has roughly 40 plants, but they are threatened by the development of recreational facilities and by illegal dumping (R. Moyroud, Mesozoic Landscapes, Inc., pers. comm. 1985). The remaining areas of *Asimina tetramera* habitat in northern Palm Beach County are along U.S. Highway 1, where the few remaining tracts of native vegetation are rapidly being developed. One estimate is that of roughly 100 plants seen in June 1985, in Palm Beach and southernmost Martin Counties, outside of parks or preserved areas, 25 to 30 have been lost to residential development (F. Reeder, Florida Power and Light Co., pers. comm. 1985). Others feel the loss of plants and their habitat has been considerably greater (D. Austin, Florida Atlantic University, pers. comm. 1986). In the limited areas where scrub vegetation is allowed to remain, survival of the pawpaws is uncertain in the long run, because *Asimina tetramera* is a root-sprouting shrub that may be rejuvenated by having its above-ground stems destroyed. In the absence of fires or hurricanes, scrub oaks are likely to shade out *Asimina tetramera.*

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Deeringothamnus pulchellus, Deeringothamnus rugelii, and Asimina tetramera* are so limited in distribution and population size that indiscriminate scientific or other collecting could adversely affect these species. Collecting is not known to occur at this time, but caution will be necessary to ensure that increased publicity does not spark such collecting.

C. *Disease or predation. Deeringothamnus rugelii* is heavily damaged by the caterpillars of an unknown moth (Norman and Brothers 1981). *Deeringothamnus pulchellus* also shows insect damage to leaves and flowers (Wunderlin *et al.* 1981). No herbivory has been reported on *Asimina tetramera*, but some plants are affected by fungus infections on the branches. The consequences of the infection are not known (R. Moyroud, Mesozoic Landscapes, Inc., pers. comm. 1985).

D. *The inadequacy of existing regulatory mechanisms.* These three shrubs are listed as endangered under the Preservation of the Native Flora of Florida Law (section 581.185 of the Florida Statutes). The Florida law regulates taking, transport, and the sale of plants, but it does not provide habitat protection. The few plants of *Asimina tetramera* in Hobe Sound National Wildlife Refuge are protected from collecting (50 CFR 27.51).

E. *Other natural or manmade factors affecting its continued existence. Deeringothamnus pulchellus* is affected by all-terrain vehicles within part of its range. *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are both vulnerable to successional changes in the vegetation. Both species require frequent fire (or its equivalent, such as bush-hogging or mowing) to maintain an open, grassy understory vegetation, and to stimulate the production of new flowering shoots (Wundelin *et al.* 1981, Norman and Brothers 1981). *Asimina tetramera* in evergreen oak-sand pine scrub habitats where fires are infrequent but intense. *Asimina tetramera* recovers quickly from fires by sprouting from its roots. Eventually scrub oaks or sand pines overtop and shade out the pawpaws. As a result, protecting the vegetation from fire constitutes a threat to *Asimina tetramera.* Both Jonathan Dickinson State Park and Hobe Sound National Wildlife Refuge are implementing plans for prescribed burning of vegetation. Tracts of scrub on private land may have to be renewed by other methods, such as cutting (Austin and Tatje 1979). The large seeds of *A. tetramera* have oily endosperm and apparently a limited period of viability. Seed collected from fresh, ripe fruit planted immediately germinated well, but older seeds did not germinate. Cultivated seedlings, grown for four years, have grown slowly, with most growth concentrated in the root system, which is sensitive to trnsplanting disturbance. This indicates that the shrub has a limited reproductive capacity, that long-term germplasm storage may be impractical, and that artificial propagation is not easily accomplished (R. Moyroud, Mesozoic Landscapes, Inc. pers. comm. 1985), and it appears that this shrub's reproductive capacity in the wild is very limited. Restriction to specialized habitats and small geographic ranges tends to intensify any adverse effects upon the populations of any rare plant. This is certainly true of these three species and is exacerbated by the loss of habitat which has already taken place.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Deeringothamnus pulchellus, Deeringothamnus rugelii,* and *Asimina tetramera* as endangered. The two former species have been extirpated from most of their historic ranges. The remaining habitat is on private land vulnerable to development, so these species could become extinct in the near future. Most of the historic range of *Asimina tetramera* is now urbanized. The remaining protected habitat of this species contains fewer than 200 individual plants, and requires management to prevent encroachment and to ensure its continued suitability for the pawpaw. Critical habitat has not been determined for these species for the reasons described in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. *Asimina tetramera, Deeringothamnus pulchellus,* and *Deeringothamnus rugelii* are so limited in numbers and range that excessive scientific collecting or vandalism could seriously damage the remaining populations of these species. Publication of critical habitat maps in the **Federal Register** would increase the likelihood of such activities. Similarly, it would not be prudent to publish maps of the known sites for *Asimina tetramera.* While collecting is generally prohibited in Jonathan Dickinson State Park and in Hobe Sound National Wildlife Refuge, these prohibitions are difficult to enforce. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are

initiated by the Service following listing. The protection requires of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, published at 51 FR 19926, June 3, 1986. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites for both *Deeringothamnus pulchellus*, and *Deeringothamnus rugelii* are on privately-owned land, there will be no effect on Federal agencies from the above requirements unless the private owners request some Federal involvement in managing their lands. *Asimina tetramera* occurs primarily on State and private property, except for a few plants existing on Hobe Sound National Wildlife Refuge. Existing management plans on the Refuge for prescribed fire should help to ensure these plants survival. The Army Corps of Engineers holds easements for dredge spoil disposal on the Refuge. Four-petal pawpaw may occur in scrub vegetation on these disposal areas. Section 7 consultation may be required if spoil is to be deposited at the sites.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export these species, transport them in interstate or foreign commerce in the course of a commercial activity, sell them or offer them for sale in interstate or foreign commerce, or remove them from areas under Federal jurisdiction and reduce them to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will be sought or issued; although *Asimina tetramera* is already in cultivation, it is expected to be of limited use as an ornamental. Neither *Deeringothamnus pulchellus* nor *D. rugelii* is likely to be popular in cultivation. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Wunderlin, R.P., D. Richardson, and B. Hansen. 1981. Status report on *Deeringothamnus pulchellus*. Unpublished report prepared for U.S. Fish and Wildlife Service.

Author

The primary author of this final rule is David Martin, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Annonaceae, to the List of Endangered and Threatened Plants.

§ 17.12 Endangered and threatened plants:

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Annonaceae—Custard-apple family:						
Asimina tetramera	Four-petal pawpaw	U.S.A. (FL)	E	244	NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Deeringothamnus pulchellus	Beautiful pawpaw	U.S.A. (FL)	E	244	NA	NA
Deeringothamnus rugelii	Rugel's pawpaw	U.S.A. (FL)	E	244	NA	NA

Dated: September 12, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-21753 Filed 9-25-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Clematis socialis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Clematis socialis* (Alabama leather flower), to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). *Clematis socialis* is only known from two sites in St. Clair and Cherokee Counties, Alabama. Threats to this species include herbicide application and mechanical disturbances associated with clearing and maintaining highway rights-of-way, and potential land use changes. This determination of *Clematis socialis* to be an endangered species implements the protection provided by the Act.

EFFECTIVE DATE: October 27, 1986.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan (See **ADDRESSES** section) at 601/965-4900 or FTS 490-4900.

SUPPLEMENTARY INFORMATION:

Background

Clematis socialis, a member of the family Ranunculaceae, was first collected in 1980 in St. Clair County, Alabama and was described in 1982 by Dr. Robert Kral. The most distinctive features are its rhizomatous habit and formation of dense clones with erect stems reaching 0.2-0.3 meters (7-12 inches) in height. Leaves are variable from the base to the apex of the stem. The lowermost leaves are scalelike, median leaves are simple, and upper leaves are 3- to 5-foliolate. The flowers, which bloom from April to May, are solitary, urn to bell-shaped, and blue-violet in color. The fruits are aggregates of achenes. *Clematis socialis* superficially resembles the more widespread *Clematis crispa*, but can be distinguished by its erect stems, rhizomatous nature, solitary flowers, and lack of tendrils (Kral 1982, 1983).

Clematis socialis is only known from two sites in northeast Alabama in St. Clair and Cherokee Counties. Attempts to locate additional populations have been unsuccessful. At both sites the plants are rooted in sticky, silty clay amid grass-sedge vegetation along highway rights-of-way. In St. Clair County the plants also occur in contiguous pine-hardwood bottoms. The St. Clair County site has been repeatedly disturbed, and many of the plants have been destroyed through heavy vehicular traffic associated with timbering on the private land and clearing of the right-of-way. The continued existence of this species is also threatened by encroaching residential development and herbicide application.

On September 27, 1985 (50 FR 39525), the Service published a new plant notice of review, which included *Clematis socialis* as a category-1 species. Category-1 species are those for which data in the Service's possession indicate listing is warranted. The Service published a proposed rule to list *Clematis socialis* as an endangered species on December 6, 1985 (50 FR 49970).

Summary of Comments and Recommendations

In the December 6, 1985, proposed rule (50 FR 49970) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Gadsden Times* on December 27, 1985. Four comments were received and no public hearing was requested or held. The Alabama Forestry Commission had no specific comments on the proposal but offered to assist the Service in the recovery effort if *Clematis socialis* was listed. Two conservation organizations and one other interested party provided comments in support of the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Clematis socialis* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Clematis socialis* (Alabama leather flower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This species occurs on a roadside right-of-way and in the adjacent woodland in St. Clair County, Alabama; there are less than 50 clones and these are all restricted to 0.4 hectare (1 acre). Recently, diseased pines were removed from the site and, even though the opening of the canopy may have been beneficial, it is not known how many plants were lost by mechanical disturbances when the timber was removed. The second population consists of only a few clones on a highway right-of-way in Cherokee County, Alabama. Due to its proximity to highways, *Clematis socialis* has suffered repeated disturbances in association with right-of-way maintenance, including herbicide application, mowing, and scraping. The viability of this species has been additionally affected by erosion from adjacent roadside banks in St. Clair County. This erosion has caused many of the plants in the right-of-way to be covered by a thick layer of silt, in addition to changing the texture and drainage properties of the soil.

Clematis socialis is imminently threatened by encroaching residential development in St. Clair County. The

private property on which this species occurs has been divided into individual lots and contiguous areas are rapidly being developed. Other land uses that are evident in the surrounding area are forest management and pasturing for cattle. Proper protection and management plans are needed for this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Due to the limited distribution and small population size of *Clematis socialis,* indiscriminate collecting of any nature could seriously affect this species and perhaps result in its extinction. Kral (1982, 1983) indicates that this species has excellent horticultural potential. Publicity regarding its rarity could generate such a demand.

C. *Disease or predation.* This species is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* There are no State or Federal laws protecting *Clematis socialis* or its habitat. The Endangered Species Act would provide protection for this species through Section 9 and the recovery process.

E. *Other natural or manmade factors affecting its continued existence. Clematis socialis* is extremely vulnerable because of its restricted range and low numbers. Any natural or human-induced disturbance could seriously affect its viability and even cause extinction. Furthermore, due to the limited number of individuals, there is a small pool of genetic variability, which reduces the ability of this species to adapt to stress.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Clematis socialis* as endangered. Endangered status is appropriate due to the species' restricted range and the multiplicity of threats facing it and its habitat. Critical habitat is not being determined for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Clematis socialis* at this time. Publishing a detailed description and map of this species' habitat might stimulate public interest and make this species more vulnerable to taking by collectors (See factor "B" in the "Summary of Factors Affecting the Species"). Also, collecting of listed plants is not prohibited by the Endangered Species Act, except from land under Federal jurisdiction. No benefit would be derived from designating critical habitat, since the landowners are aware of the locations and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent or beneficial to determine critical habitat for *Clematis socialis* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act have been revised and published at 51 FR 19926; June 3, 1986. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. The only possible Federal involvement with *Clematis socialis* at this time would be possible Federal funds or other Federal involvement with the highway rights-of-way maintenance. Highway maintenance crews are working cooperatively with the Service at both sites to find rights-of-way maintenance techniques that are compatible with protecting the *Clematis.*

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Kral, R. 1982. A new *Clematis* from northeastern Alabama. Rhodora 84:285–291.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, Forest Service, Technical Publication R8–TP2, pp. 409–412.

Author

The primary author of this final rule is Ms. Cary Norquist (see **ADDRESSES** section) at 601/965–4900 or FTS 490–4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. Amend § 17.12(h) by adding the following, in alphabetical order under Ranunculaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Ranunculaceae—Buttercup Family:						
Clematis socialis	Alabama leather flower	U.S.A. (AL)	E	245	NA	NA

Dated: September 12, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR. Doc. 86–21756 Filed 9–25–86; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Dismal Swamp Southeastern Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status for the Dismal Swamp southeastern shrew (*Sorex longirostris fisheri*), a small mammal restricted primarily to the Dismal Swamp of southeastern Virginia and adjacent North Carolina. This swamp has undergone extensive environmental changes in the recent past, as a result of human activities. In addition to having direct adverse effects on the shrew, these habitat changes are apparently enabling a neighboring upland subspecies of southeastern shrew to invade the swamp. The Dismal Swamp southeastern shrew may be vulnerable to genetic extinction through continued interbreeding with the more widespread upland subspecies. This rule implements the full protection of the Endangered Species Act of 1973, as amended, for the Dismal Swamp southeastern shrew.

EFFECTIVE DATE: October 27, 1986.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address (301/269–6324 or FTS 922–4197).

SUPPLEMENTARY INFORMATION:

Background

The Dismal Swamp southeastern shrew is a small, long-tailed shrew with a brown back, slightly paler underparts, buffy feet, and a relatively short, broad nose (Handley 1980). It was first described as a species, *Sorex fisheri*, by C. H. Merriam in 1895, based on four specimens trapped that same year in the Dismal Swamp by A. K. Fisher. Jackson (1928) reduced *S. fisheri* to a subspecies of *Sorex longirostris*, which is found over much of the southeastern United States. *S. l. fisheri* generally has a duller pelage than *S. l. longirostris* and is 15 to 25 percent larger. Most *S. l. fisheri* measure about 4 inches (95–102 millimeters) in total length, while most *S. l. longirostris* measure about 3 inches (75–85 millimeters) (Rose 1983)

The Dismal Swamp southeastern shrew is essentially restricted to the Great Dismal Swamp National Wildlife Refuge in southeastern Virginia (cities of Suffolk and Chesapeake, formerly Nansemond and Norfolk Counties) and adjacent portions of the swamp in North Carolina (Camden, Gates, Pasquotank, and Perquimans Counties) (Handley 1980, Hall 1981, Rose 1983). A single specimen of *fisheri* was recently collected in Currituck County, North Carolina (Clark *et al.* 1985), within the historical extent of the swamp. Prior to 1980, the subspecies was known only from 19 specimens collected near the heart of the Dismal Swamp (Handley 1979). Since 1980, at least 40 additional specimens have been collected in and adjacent to the Dismal Swamp, which can be identified as *S. l. fisheri* on the basis of total length (Rose 1983). The subspecies is found in a variety of habitats, from lowland old fields to mature pine and deciduous forests, but is most abundant in mesic successional habitats such as cane stands, regenerating clearcuts, and 10 to 15-year old forested plots (Rose 1983).

The Dismal Swamp southeastern shrew is considered threatened due to its very limited distribution and to recent, human-induced habitat changes in the swamp. In addition to affecting this lowland shrew directly, these changes may be allowing is restricted habitat to be overrun by the more plentiful *Sorex longirostris longirostri* (Handley 1980, Rose 1983).

In order to understand this situation more clearly, it is necessary to consider the dynamics of the evolutionary process within the swamp. The Dismal Swamp has apparently acted like an island for several species of small mammals, including *Sorex longirostris*. The subspecies that evolved in the swamp show a feature typical of small mammals on islands; that is, individuals are larger than those from the nearby "mainland," or in this case, upland subspecies (Carlquist 1974). In the process of subspeciation, individuals in the swamp would be at a competitive disadvantage when living outside the swamp, and the upland race would be equally handicapped in the swamp. It follows that any action which detracts from the distinctive nature of the swamp (e.g., draining) will favor the upland taxon, in this case *S. l. longirostris*, over the swamp subspecies, *S. fisheri*.

In its Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (48 FR 58454–58460), the Service Placed *S. l. fisheri* in category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial biological data were not then available to support such a proposal. Subsequently, the Service received a report from Dr. Robert K. Rose (1983), who had been contracted to investigate the status of the shrew. The data in Dr.

Rose's report, along with other new information assembled by the Service, showed that a proposal to list the shrew as threatened was warranted. In the **Federal Register** of July 16, 1985 (FR 28821), the Service proposed *S. l. fisheri* as a threatened species.

Summary of Comments and Recommendations

In the July 16 proposed rule (50 FR 28821) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations and other interested parties were contacted and requested to comment. A newspaper notice, inviting general public comment, was published in the *Virginia Pilot and Ledger-Star* on July 28, 1985.

Only two comments were received. One was from the Virginia Department of Game and Inland Fisheries, which expressed full support of the proposal to list *S. l. fisheri* as threatened. The other comment, from the City Manager, City of Suffolk, Virginia, neither supported nor opposed the rule; it addressed potential positive impacts to the shrew of a proposed highway by-pass around the city. The effects, positive or negative, of this by-pass on the shrew may now be addressed through the Section 7 consultation process. No new biological data were received during the comment period, and no public hearings were requested.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Dismal Swamp southeastern shrew should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Dismal Swamp southeastern shrew (*Sorex longirostris fisheri*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Handley (1980) noted that the Dismal Swamp southeastern shrew is essentially confined to the Dismal Swamp. Oakes and Whitehead (1979) estimated that around the turn of the century this swamp, more accurately described as a timbered peat bog, occupied some 2,000 to 2,200 square miles (5,200 to 5,700 square kilometers). Even at that time, its size had been reduced and its character altered by clearing, draining for agriculture, and the construction in the early 19th century of the Dismal Swamp Canal. Today, only about 328 square miles (853 square kilometers) of the original swamp remain, there having been a reduction of roughly 85 percent since the turn of the century (U.S. Fish and Wildlife Service 1982).

The character of the remaining swamp has been altered by ditching, beginning in the late 1700's, which has lowered the water table. Furthermore, naturally occurring burns, and human-related activities, such as burning, grazing, and logging, which once maintained portions of the swamp in various stages of succession, were curtailed or eliminated with the establishment of the Great Dismal Swamp National Wildlife Refuge in 1973. As a consequence, the former Dismal Swamp, a heterogeneous mosaic of large tracts of bald cypress, Atlantic white cedar, and cane, has been replaced by a more homogeneous, mesic swamp dominated by a rapidly maturing red maple and black gum forest. This progression toward homogeneous mature hardwood forest is likely detrimental to the Dismal Swamp southeastern shrew. Rose's (1983) trapping data revealed that, of all habitats evaluated in the swamp, densities of *Sorex* were lowest in mature forests. Conversely, shrews were most abundant in cane stands and regenerating clearcuts, with the highest densities in 10- to 15-year old, mid-successional forested areas with grassy or shrubby understories. These habitats are now rare within the Dismal Swamp and will essentially disappear without active management to maintain them.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a problem.

C. *Disease or predation.* Not known to be a problem.

D. *The inadequacy of existing regulatory mechanisms.* As a faunal component of the Great Dismal Swamp National Wildlife Refuge, the subspecies is protected within Refuge boundaries from direct disturbance violations (to kill, possess, disturb, injure, damage, etc., without special permit) by 50 CFR 27.51. The main problem of the shrew, however, is not direct disturbance or taking, but alteration of habitat (see "A") and consequent vulnerability to genetic swamping (see "E").

E. *Other natural or manmade factors affecting its continued existence.* The Dismal Swamp southeastern shrew probably developed its distinctive size and coloration while geographically or ecologically isolated from its smaller upland relative, *Sorex longirostris longirostris*, during the late Pleistocene. Recent rapid changes in the Dismal Swamp (as described in "A" above) may have converted the swamp environment into habitat more suitable for the latter subspecies, apparently causing an ingress of *S. l. longirostris* into the swamp. The Dismal Swamp southeastern shrew is threatened through contact and interbreeding with this smaller subspecies (Handley 1980, Rose 1983). Rose (1983) found evidence of interbreeding between the two subspecies along the east and west periphery of the swamp. Evidence of contact and interbreeding is further reinforced by Rose's observation of a clear trend in size, from large to small shrews, as one moves peripherally from the Dismal Swamp. Because of the restricted distribution of the larger Dismal Swamp shrew, it is probable that the continued interbreeding of the two subspecies will eventually result in an infusion of genes of *S. l. longirostris* into the entire Dismal Swamp shrew population. This would constitute extinction for the Dismal Swamp southeastern shrew.

The hybridization process now jeopardizing the Dismal Swamp southeastern shrew is comparable to that which has nearly destroyed another mammal, the red wolf (*Canis rufus*), which is federally classified as endangered. According to Nowak (1979), the red wolf originally occupied a range and habitat in the forested southeastern United States, largely separate from that occupied by its smaller relative, the coyote (*Canis latrans*) of the western prairies. Human activities reduced red wolf numbers, disrupted its habitat, and allowed the coyote to invade its range. The latter species then began to interbreed with surviving red wolves. As a result, by the early 20th century zones of hybridization were evident in central Texas and the Ozark region. At that time there was a clear progression in size, ranging from the small coyote in the north and west, through intermediate-sized *Canis* in central Texas and the Ozarks, to the large red wolf in eastern Texas, Louisiana, and some adjacent areas. This situation was much the same as we see today in the *Sorex* of the Dismal Swamp region. No conservation measures were initiated for the red wolf until the 1960's, and by then the hybridization process had engulfed almost all of the species. The red wolf, in the pure form, has now

nearly or entirely disappeared from the wild. By catching the same process at an earlier stage, it may yet be possible to save the Dismal Swamp southeastern shrew.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Dismal Swamp southeastern shrew as threatened. The Act defines a threatened species as one which "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." This status seems most appropriate for *Sorex longirostris fisheri* at this time. As stated above, the subspecies is jeopardized primarily by its limited distribution and the possibility of genetic swamping if present trends continue. These trends have not yet progressed so far that extinction appears imminent; they may be reversed by proper conservation measures. obtain data necessary for proper management, the interactions and ecology of the two shrew subspecies must be further studied. Such study involves trapping and, therefore, taking of shrews. Paradoxically, in this particular instance, such taking may be necessary to the survival of the threatened subspecies. For the reasons given below, no critical habitat is being designated.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. Implementing regulations at 50 CFR 424.12(a)(1) state: "A designation of critical habitat is not prudent when one or both of the following situtations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species." In the case of the Dismal Swamp southeastern shrew, the Service finds that a determination of critical habitat is not prudent. Such a determination would result in no known benefit to the species. Nearly all of the known habitat of this species lies within the Great Dismal Swamp National Wildlife Refuge, which is managed by the Service. The Refuge managers and all other involved parties are already aware of the occupied range of this species. Moreover, this final determination of threatened status will be followed by continued development of Refuge management strategies designed to benefit the Dismal Swamp southeastern shrew. Thus, no benefit would accrue from designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperative provision of the Act are codified at 50 CFR 402 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(2) requires agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

An overall management plan is currently being developed for the Great Dismal Swamp National Wildlife Refuge. This plan will be designed, in part, to consider the needs of *Sorex longirostris fisheri*. Land use practices likely to benefit this shrew would include: (a) increasing the height of the water table and (b) selective burning and other logging practices that maintain a mosaic of forested plots of differing ages in areas where *S. 1. fisheri* is now predominant (Rose 1983). Intra-Service consultation on this master plan will be required as a result of this listing. The proposed highway by-pass mentioned in the Comments section above will also require formal consultation (by the Federal Highway Administration) as a result of this rule. Finally, the U.S. Army Corps of Engineers is considering closing the Dismal Swamp Canal.This action will also require consultation, to ensure that the closure is done in a manner consistent with the well-being of *S. 1. fisheri*.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In come instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not otherwise available.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended.

A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Ms. Judy Jacobs, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401 (301/269–6324 or FTS 922–4197).

List of Subjects in 50 CFR Part 17

Endangered and Threatened Wildlife, Fish, Marine Mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Mammals," to the list of endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		
Shrew, Dismal Swamp southeastern.	*Sorex longirostris fisheri*	U.S.A. (VA, NC)	Entire	T	246	NA	NA
*	*	*	*	*	*		

Dated: September 12, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–21757 Filed 9–25–86; 8:45 am]

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Federal Register

Friday
September 26, 1986

Part V

Environmental Protection Agency

40 CFR Part 51

Reasonable Extra Efforts Program for Four Post-1987 Nonattainment Areas in California; Advance Notice of Ozone and Carbon Monoxide Control Program and Solicitation of Comment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[A-9-FRL-3085-6]

Air Quality Implementation Plans; Reasonable Extra Efforts Program for Four Post-1987 Nonattainment Areas in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of ozone and carbon monoxide control program and solicitation of comment.

SUMMARY: EPA is developing a new program in California called the "Reasonable Extra Efforts Program" (REEP) for steadily reducing emissiokns of hydrocarbons, nitrogen oxides, and carbon monoxide in four nonattainment areas of the State in order to attain the applicable national ambient air quality standards (NAAQS) as expeditiously as practicable. These areas are the South Coast Air Basin, Fresno County, Ventura County and the Sacramento area. REEP would apply to both ozone and carbon monoxide in the South Coast and Fresno and to ozone only in Ventura and Sacramento. EPA intends this announcement as an advance notice of how, in federal rulemakings on future revisions to the State Implementation Plan (SIP), EPA will judge the adequacy of the planning and regulatory efforts in these areas. EPA solicits public comment on the overall REEP and is also accepting public comment on each of the program elements of the REEP. In order to most effectively administer the Clean Air Act requirement to ensure attainment of the NAAQS, EPA intends to continue to work with the affected public to conduct a vigorous program of reasonable extra efforts in each post-1987 nonattainment area.

DATES: Although comments on this program will be welcome at any time, comments received will be fully considered in developing the program policies related to the REEP.

ADDRESSES: Comments should be addressed to: Judith E. Ayers, Regional Administrator, EPA, Region 9, Attention: Air Management Division (A-2), 215 Fremont Street, San Francisco, CA 94105.

All of the documents referenced in today's notice are available for public inspection during normal business hours at EPA's Region 9 office in San Francisco and at EPA's Headquarters' address noted below.

Reference Desk, EPA Library, Room 2904, 401 M Street SW., Washington, DC 20460 (202) 382-5922; FTS 382-5922.

Persons wishing copies of one or more of these documents may write or call the Information Contact listed below.

FOR FURTHER INFORMATION CONTACT: Lucille van Ommering, EPA, Region 9 (A-2), Air Management Division, 215 Fremont Street, San Francisco, CA 94105 (415) 974-8213; FTS 454-8213.

SUPPLEMENTARY INFORMATION:.

I. Background

A. Statutory Requirements

In 1970 Congress amended the Clean Air Act to establish a joint state and federal program to control air pollution. As required by the new sections 109 and 110, EPA established national ambient air quality standards (NAAQS) for such pollutants as photochemical oxidants (hereinafter "ozone") and carbon monoxide (CO), and called for states to submit state implementation plans (SIPs) providing for attainment of those standards within certain prescribed periods. Section 110(c) provided that EPA was to promulgate plans for areas that did not have adequate SIPs.

In many areas of the country, the original SIPs that EPA approved or promulgated in the early 1970s failed to bring about attainment of the ozone and CO NAAQS within the statutory deadlines. When Congress revised the Clean Air Act in August 1977, it added a new Part D, a planning process to revise the SIPs for nonattainment areas, and amendments to sections 107 and 110 to address this nonattainment problem.

In section 107(d) Congress instructed the states and EPA to identify all areas of the country that were not in attainment with the NAAQS. In the new section 110(a)(2)(I), Congress required the SIPs for these "nonattainment areas" to contain either measures meeting the requirements of Part D or a moratorium on the construction and modification of major stationary sources.

Part D extended NAAQS attainment dates but tightened control requirements for both new and existing sources. In sections 172(a) and 129(c), Congress directed the states to submit by January 1, 1979, state implementation plans that provided for attainment of the primary, health-based standards as expeditiously as practicable but, except for certain ozone and CO nonattainment areas, not later than December 31, 1982. These Part D plans were also to provide for all emissions reductions available from applying "reasonably available control technology" (RACT) to existing sources, and to establish a permit program under section 173 for the construction and modification of new major stationary sources. Ozone and CO nonattainment areas could received extensions of the attainment date to as late as December 31, 1987 if they could show that attainment would not occur by the end of 1982 even with the application of all reasonably available control measures. These "extension" areas were to submit by July 1, 1982, Part D plan updates providing for attainment by December 31, 1987.

Congress also provided that additional consequences could result from the failure of states to submit adequate Part D plans. First, after July 1, 1979, the construction ban for major new sources required by section 110(a)(2)(I) would apply in any nonattainment area that lacked an approved plan that met the Part D requirements. Further, Congress provided in section 176(a) that states that did not submit or did not make reasonable efforts to submit adequate Part D plans for the transportation-related pollutants (ozone and CO) would be subject to a cutoff of certain highway construction funds disbursed by the Department of Transportation, as well as Clean Air Act grant assistance funds. Moreover, Congress also established that a state that failed to implement its SIP would be subject to a cutoff of Clean Air Act grant funds (section 176(b)), a construction ban for major new sources (section 173(4)), and a cutoff of sewage treatment grant funds (section 316(b)).

B. Regulatory Background

1. National Policy

On March 3, 1978 EPA promulgated the attainment status designations required by amended section 107 (43 FR 8962). On April 4, 1979 (44 FR 20372), EPA issued a "General Preamble" describing in detail the prerequisites to EPA approval of the SIP revisions that Part D required the states to submit by July 1, 1979 for designated nonattainment areas. By July 1, 1979, no nonattainment area had a fully approved Part D SIP. For that reason, EPA published a regulation that applied the section 110(a)(2)(I) construction ban in each nonattainment area that lacked such a SIP (see 40 CFR 52.24).

On April 10, 1980 (45 FR 24692), EPA and the Department of Transportation published a joint policy for the implementation of the section 176(a) funding restrictions. The policy stated that EPA would determine case by case whether a state is making "reasonable efforts" to submit a plan that satisfies Part D for a particular area.

On January 22, 1981 (45 FR 7182), EPA issued new policy describing the criteria it would use to judge the 1982 Plan updates due July 1, 1982 from extension areas (the "1982 SIPs"). This 1982 SIP policy specified minimum control measures for these areas and required them to implement all additional measures that could be implemented in time to bring about attainment by the end of 1987. Examples of such measures were:

(1) Requiring control of all major stationary sources to levels more stringent than those generally regarded as RACT;

(2) Extending controls to stationary sources and source categories other than those subject to the minimum control measures;

(3) Implementing a broader range of transportation controls (e.g., extending the geographic coverage of some measures or providing more intensive implementation); and

(4) Increasing the coverage and stringency of the vehicle emissions inspection and maintenance (I/M) program.

The 1982 SIP policy envisioned that some extension areas would be unable to demonstrate attainment of the ozone or CO standard by the end of 1987 even with these measures. For these areas, it instructed the states to "analyze the transportation and other measures possible in a longer time frame that, together with the measures already evaluated, will result in attainment as quickly as possible after 1987." (45 FR 7188). The notice added:

> If an area is unable to attain the ozone and carbon monoxide NAAQSs by 1987, then the "most expeditious date beyond 1987" must be agreed to by state and local agencies. . . . EPA believes that an approach which requires a state to demonstrate attainment by a certain date using measures it is committed to implement is more in keeping with the spirit of the Clean Air Act than an approach which would accept "paper" demonstrations of attainment by 1987 which relied on measures which would be virtually impossible to implement. *Id.*

Thus, EPA was prepared in 1981 to consider extensions of the attainment dates for areas that could not demonstrate attainment by December 31, 1987 so long as their SIPs were to attain the NAAQS as expeditiously as practicable thereafter.

In November 1983, EPA issued a notice explaining its policy for areas that missed the December 1982 deadline (48 FR 50686). EPA set forth the policy that it would not impose a construction ban or the funding restrictions simply because an area failed to attain the standards in time. Instead, EPA announced that it would impose such sanctions only if a state were not making a credible, productive effort to create and adopt an adequate plan. EPA stated that it would measure the adequacy of "corrective SIPs" for these areas by whether the plans would bring about attainment "as expeditiously as practicable", even if beyond the statutory date. The policy directly addressed only nonextension areas that had not attained the standards by December 31, 1982.

Shortly after issuing this policy in November 1983, EPA issued a "Guidance Document for Correction of Part D SIPs for Nonattainment Areas". That document stated that EPA intended to use the 1981 guidance on "post-1987" extension areas as a basis for determining whether EPA would apply funding restrictions in any such area. It also required SIPs for these "post-1987" areas to "commit to an ongoing program for evaluating and carrying out additional controls as they become available, including those that can be implemented over a longer time frame (i.e., beyond 1987)." *Id.* at 49. Finally, the document stated, "This program must be carried out on a continuing basis until the area actually attains the NAAQS." *Id.*

2. Regulatory Actions in the California Areas

In the initial round of Section 107 nonattainment designations, EPA designated Ventura County and the Sacramento Air Quality Maintenance Area as nonattainment for ozone, and the South Coast and Fresno County as nonattainment for both CO and ozone. After EPA's July 1979 imposition of the Section 110(a)(2)(I) construction moratorium, the State submitted and EPA approved the 1979 Part D SIPs for all four areas. As a result of those approvals, the Agency lifted the construction ban.

As part of the initial round of Part D SIP planning, the State of California requested EPA to approve extensions of the statutory attainment date to December 31, 1987 for the relevant pollutants in all four areas. EPA approved all of the requests. The State then submitted 1982 Plan updates for the ozone SIPS for all four areas as well as for CO SIPs for the South Coast and Fresno. Although these SIP revisions include control measures that would produce expeditious progress toward attainment of the applicable standards, they did not demonstrate that the areas would attain the standards by the statutory date of December 31, 1987.

On February 3, 1983 (48 FR 5074), EPA proposed to disapprove the State's submittals, primarily because they failed to demonstrate attainment of the standards by the statutory attainment date. EPA indicated that a final disapproval would result in EPA's imposition of the section 110(a)(2)(I) construction moratorium. The proposal drew many comments questioning EPA's threatened use of sanctions and urging instead that EPA use a "reasonableness" test to decide whether to impose sanctions. Some commenters argued that these nonattainment areas were working as expeditiously as practicable to reach attainment and were implementing in good faith all reasonably available control measures, as well as some control measures going beyond RACT. They suggested that disapproving the 1982 SIPs for these areas would be inconsistent with EPA's 1982 SIP policy which indicated EPA's willingness to accept post-1987 attainment of the ozone and CO standards if the plan included a convincing demonstration that the State would implement all reasonably available control measures as expeditiously as practicable.

In response to these comments and after a general review of EPA's sanctions policies, on July 30, 1984 (49 FR 30300), EPA took final action to approve the control measures in each of the 1982 SIPs for the four California areas because they would strengthen the SIP, and explicitly took no action on the attainment demonstration and the provision to sustain reasonable further progress (RFP) in reducing emissions in those SIPs.

EPA did not impose the section 110(a)(2)(I) construction moratorium in the four areas. Instead, EPA stated that it would perform an in-depth evaluation of what control measures would be required to demonstrate attainment of the applicable NAAQS in those areas and, consistent with section 176(a), would "determine whether all reasonable efforts continue to be made to submit an approvable SIP." 49 FR 30304. With these statements, EPA initiated a policy that has now evolved into the Reasonable Extra Efforts Program (REEP) described below.[1]

[1] Mark Abramowitz, a citizen residing in Los Angeles, petitioned the U.S. Court of Appeals for the Ninth Circuit for review of EPA's final rulemaking on the SIPs for these areas. The parties have agreed to stay the case pending EPA's implementation of the REEP, which is described in a letter of understanding attached to the stipulation. The court has agreed to a temporary stay of the case pending a report on the status of the implementation of the REEP and further requests to

Continued

C. The Current Dilemma

At the present time, ambient CO and ozone concentrations in the four California nonattainment areas are well above the applicable NAAQS. The State has recognized since 1982 that the control measures in the SIPs for these areas will not bring about attainment of those standards by the end of 1987. Moreover, additional measures that may now be reasonably available would not be adequate by themselves to bring about attainment. Rather, it seems that only severe restrictions on emissions sources could reduce CO and ozone levels to the substantial extent needed to meet the standards by December 31, 1987.

On its face the Clean Air Act requires states either to submit plans that provide for attainment by the end of 1987 or to face plan disapprovals, the imposition of sanctions, and federal plan promulgations. Thus, the statutory language seems to impose on these areas a choice between implementing whatever measures are required to attain the standards by the statutory date, even if those measures would cause severe economic disruption, and enduring federal imposition of sanctions.

However, neither the Clean Air Act nor the legislative history expressly addresses the inability of all reasonably available control measures to bring about attainment in an area by the statutory dealine. Furthermore, the history of the 1977 Amendments reveals two themes that suggest that Congress would not have intended these areas to suffer sanctions for their failure to implement extraordinary measures needed to meet the 1987 date. First, the history reveals Congress' strong desire to achieve the Act's air quality goals without suppressing economic growth. Second, Congress created the sanctions to address the failures of states to plan seriously and diligently to bring about attainment and not to punish states that, despite good faith efforts, could not bring about attainment without imposing severely disruptive measures.

This apparent conflict between the language of Part D and the legislative themes underlying that language leaves EPA without clear direction on how to achieve attainment of the CO and ozone standards in these California areas, as well as other areas in the country facing similar circumstances. To find a way through these uncharted waters, EPA has decided to initiate a broad public dialogue on how EPA should interpret Part D for these persistent nonattainment areas. To launch that dialogue, the Administrator of EPA addressed the annual convention of the Air Pollution Control Association (APCA) in Minneapolis on June 23, 1986. There, the Administrator noted that many areas in the nation face a situation similar to that of the California post-1987 areas and discussed EPA's preliminary thinking on alternative options for addressing the problem.

The Administrator indicated in his speech that EPA is not inclined to ignore failures to meet the 1987 deadline until Congress itself addresses the question. He described that option as inconsistent with Congress' obvious desire to achieve expeditious progress toward attainment and with EPA's clear responsibility to act in the spirit of the statute. Rather, EPA is now seeking to include interested members of Congress in the dialogue on how to proceed in the interim. As part of that interaction, EPA intends to discuss its evolving thoughts on how well each of the policy options described below fits the terms and spirit of Part D.

As indicated in the Administrator's APCA speech, EPA has been considering three alternative approaches to post-1987 nonattainment. First, EPA has considered imposing sanctions on every area that does not attain the standards by the end of 1987 and lifting those sanctions only upon actual attainment of the standards. As the Administrator stated before APCA, however, for the reasons expressed in the November 1983 policy EPA is not inclined toward choosing that option. EPA believes that Congress created the sanctions as tools to require diligent planning, not punishments for failures to attain the standard.

The Administrator also indicated that EPA is not inclined to require all post-1987 areas to submit new SIP revisions demonstrating attainment within a fixed period comparable to that provided initially to nonextension areas under section 172 (e.g., three to five years). That option, he noted, would impose on areas with the worst air quality the same unacceptable choice between disruptive control measures and sanctions.

Instead, the Administrator outlined a program that would require revisions demonstrating attainment within a fixed, short period only for areas that can attain within that period without implementing unreasonable control measures and, for areas with intractable nonattainment problems, would require periodic SIP revisions to achieve only the progress toward attainment achievable by implementing all control measures found to be reasonably available at the time. In this way, these areas could achieve attainment "as expeditiously as practicable", as required by section 172, while showing sustained progress toward that goal in the interim. Under this option, EPA would reserve sanctions only for areas that did not make reasonable efforts to show such progress through diligent planning and implementation.

Although EPA now believes that this approach represents the best way of satisfying the purposes of Part D, the Agency recognizes that its approach presents difficult legal issues. Part D sets forth a scheme requiring diligent planning to attain the standards by a fixed date. Yet the approach just described would focus on achieving the implementation of all reasonably available measures and not on a specific attainment date. This would be a major shift in focus of the Act. EPA requests comments on the legality and appropriateness of this shift and intends to address the issue further in its dialogue with Congress, and when it publishes a policy addressing post-1987 nonattainment for the nation as a whole.

As proposed in the Administrator's speech to APCA, EPA would implement the preferred approach by (1) improving the effectiveness of current regulations; (2) implementing new national measures and policies; (3) requiring the submittal of SIP revisions and initial modeling demonstrations for most nonattainment areas; and (4) creating a sustained progress program to address long-term nonattainment.[2]

EPA believes that the REEP designed for the four post-1987 areas of California is similar in approach to the proposed direction of the new national policy. However, whereas the Administrator has suggested that the national post-1987 program might be implemented via a section 110(a)(2)(H) SIP call, EPA does not believe that a call for a Section 110 SIP revision is applicable at this time to the four post-1987 areas in California as EPA has never fully approved the 1982 SIP for these areas. Furthermore, EPA does not believe that issuing a new Section 110 SIP call would result in a more expeditious implementation schedule than the one currently

continue the stay. The terms of the letter of understanding are not enforceable by the court. Instead, the petitioner's recourse, should EPA not implement the program, would be to reactivate the litigation. The letter does not set forth the minimum criteria for Part D SIPs for post-1987 areas; nor does it represent final EPA policy on the REEP.

[2]The current schedule for developing the national strategy anticipates a proposal in the Federal Register in late 1986. Following an appropriate period for receipt and review of public comment, EPA will publish a final ozone policy.

envisioned under the REEP, nor would it result in an earlier demonstration of attainment.

D. Advanced Schedule for California's Ozone Program

While a national ozone policy may not be finalized until mid-1987, the Administrator has endorsed the need for California's post-1987 areas to move ahead of the national schedule—at least until a new national policy is published. There are several compelling reasons for this advanced schedule for California.

First, as early as 1982, California identified that four areas in the State could not demonstrate attainment by December 31, 1987 of the CO and/or ozone NAAQS despite the adoption of control measures which met or exceeded the minimum EPA requirements for extension areas. Since then, the State has worked with EPA to develop a program to ensure sustained progress in achieving the CO and ozone NAAQS as expeditiously as practicable. It would be counterproductive and environmentally unsound to put this program on hold while the details of a national policy are discussed.

Second, the 1982 SIP for each of the four post-1987 areas contains a commitment to continue to adopt all reasonably available control measures to attain the standards. Additionally, each of the four plans contains a contingency plan which commits each nonattainment area to investigate the feasibility of additional control measures when the adopted plan is determined to be inadequate for purposes of demonstrating sustained emission reductions pursuant to RFP. EPA interprets both of these actions as a standing commitment to pursue additional controls until NAAQS attainement is demonstrated. Freezing the current planning efforts would compromise these standing commitments.

Third, pursuant to its final rulemaking on the 1982 SIP for the four post-1987 areas, EPA has investigated whether additional measures exist which are reasonably available for implementation by 1987. As a result of this analysis, which has been performed in association with the relevant State and local agencies, EPA believes that there are control measures that are reasonably available *now* which go beyond the adopted 1982 plans for each of the four areas. It would be inappropriate for EPA, the State, and the four post-1987 areas to defer action on those measures, especially in light of the standing SIP commitments described above.

Fourth, EPA's 1982 SIP policy for CO and ozone extension areas, as well as the 1984 guidance on the correction of Part D SIPs, called on states with post-1987 areas to commit to adopt and implement such measures beyond the minimum measures outlined in that guidance as would bring about attainment as expeditiously as practicable after 1987. Thus, an EPA policy allowing a temporary hold on the current post-1987 planning efforts in these areas would reverse long-held Agency policy on the issue.

Finally, EPA has the authority under Part D to require expeditious planning schedules and the adoption and implementation of all reasonably available control measures. Section 172 requires a demonstration that these areas will attain the standards as expeditiously as practicable, and the sanctions prescribed by sections 110(a)(2)(I), 176(b), 173(4), 176(a) and 316(b) remain available to address failures of these areas to meet the Clean Air Act's planning and implementation responsibilities.

For these reasons, EPA believes that it should continue to implement its ongoing program for Part D plan improvements in each of the four California post-1987 areas. The remainder of this notice outlines the program, known as the "Reasonable Extra Efforts Program", that EPA contemplates for this purpose. EPA intends that this announcement shall serve as an advance notice of how, in future SIP rulemakings, EPA will judge the adequacy of the Part D planning efforts in these areas.

II. Reasonable Extra Efforts Program

Under the REEP, EPA expects the State to submit a SIP revision "REEP SIP") by February 1987 which contains an updated 1982 plan schedule ("REEP SIP schedule") for each of the four post-1987 nonattainment areas. The details of that SIP revision are described below.

A. Overall Concept

The REEP has been initiated by EPA to ensure that post-1987 nonattainment areas in California steadily reduce emissions in order to attain the NAAQS for ozone and carbon monoxide. This is to be accomplished as expeditiously as practicable by implementing control measures and other program enhancements which go beyond those contained in the federally-approved 1982 SIP control strategy. To this end, the Program is a collaborative effort involving the active participation of the California Air Resources Board (CARB), the California Department of Transportation (Caltrans), local air pollution control districts (districts) and local lead agencies responsible for Part D SIP planning and implementation in post-1987 areas in California. Under REEP, these agencies are given the task of developing and adopting a broad spectrum of program enhancements, both regulatory and non-regulatory in nature [3] which go beyond currently adopted SIP control strategies to the extent necessary for attainment. As such, this program will be an iterative process, involving these agencies in the review, development, adoption and implementation of measures and other program improvements until NAAQS attainment is demonstrated.

The REEP consists of two main components: (1) Control strategy development and (2) program enhancements identified through auditing of SIP implementation. Both of these components would be addressed beginning with the State's submittal to EPA by February 1987 of updated and enforceable REEP SIP schedules for consideration of those measures and other program improvements ("REEP SIP measures") determined to be necessary to achieve the NAAQS as expeditiously as practicable.

EPA expects the State to submit periodically (presumptively every two years, beginning in February 1987) an enforceable REEP SIP containing commitments with dates which constitute an expeditious schedule to: (1) Consider for adoption additional measures which are necessary to demonstrate reasonable efforts under Part D of the Clean Air Act; (2) decide which of those additional measures to adopt, and adequately justify the rejection of any applicable REEP SIP measures; and (3) implement the adopted REEP SIP measures.

B. Determinations of Reasonable Efforts and SIP Implementation

EPA will make periodic findings of whether the State is making reasonable efforts to submit an adequate Part D SIP for these four areas. In making such findings, EPA will consider all relevant factors, including adherence to REEP SIP requirements. If EPA determines that the State is not making reasonable efforts in any of the four areas pursuant to section

[3] By regulatory, EPA means development and adoption of measures which are contained in a SIP control strategy required under Part D of the Clean Air Act. By non-regulatory, EPA means activities of an air pollution control program other than rule development related to planning and rule implementation of control measures, including operational or administrative practices, enforcement, source permitting, emissions and SIP implementation tracking, and emissions data gathering.

176(a), it will initiate a public notice and comment rulemaking under section 176(a) to impose the highway and/or Clean Air Act grant funding restrictions provided by that section.

EPA also will make periodic findings of whether the relevant State and local agencies are implementing the commitments in the REEP SIP schedule, as well as the REEP SIP measures actually adopted by those agencies. If EPA determines that impelementation is not proceeding on schedule, it will initiate a rulemaking to make a finding of non-implementation and to impose one or more of the available sanctions under sections 173(4), 176(b), and 316(b).

EPA is cognizant of the potential, however small, of inconsistencies which may occur between the REEP and the new national ozone policy once finalized. This would be of particular concern if EPA were to impose sanctions under the REEP for failure to make reasonable efforts using different criteria than those eventually used for the rest of the country under the national policy. While section 176(a) sanctions would be imposed for failure to submit a REEP SIP, once the REEP SIP schedule is approved, EPA does not intend to impose section 176(a) sanctions on the State or any local control agency for not making reasonable efforts unless the Administrator makes an affirmative finding that there would be no inconsistency between this action and the policy contemplated for the rest of the country.

It should also be noted that any decision to defer a reasonable efforts determination on the REEP SIP measures will not relieve EPA from its responsibilities under the Clean Air Act to ensure that adopting agencies consider measures according to the REEP SIP schedule or that an adequate justification is provided by adopting agencies for any measures which are rejected. A failure to meet these requirements by the State or post-1987 area agencies can lead to an EPA finding of nonimplementation and the imposition of sanctions under section 176(b) of the Clean Air Act.

C. Control Strategy Development

The REEP process includes the investigation and development of improvements to strengthen the control strategy portion of the adopted 1982 SIP.

For specific stationary and mobile source categories, including transportation control measures (TCMs), this comprises analyses of: (1) Existing measures which could be strengthened; and (2) new measures where the technology appears to be feasible and effective. Based on this evaluation, EPA would periodically identify opportunities for additional emissions reductions and recommend consideration by the State and local control agencies.

D. SIP Auditing

Under the second component of the REEP process, the use of comprehensive program audits would be conducted under EPA and CARB leadership with the assistance of relevant local districts. The aim of the audit would be to identify and correct regulatory and non-regulatory air pollution control program deficiencies in order to maximize the effectiveness and enforceability of the SIP. The audit would concentrate on making improvements to air pollution control program operational practices covering rule development and enforcement, source permitting, emissions and SIP implementation tracking, and emission data gathering.

At the conclusion of the audits, the investigating agency would recommend areas for improvement in the audited program for consideration by the local control agency. EPA intends to periodically track, evaluate and make recommendations for improvements to SIP implementation in each post-1987 area via the comprehensive audits and through an annual tracking system for evaluating overall plan performance. This evaluation in turn is expected to result in further improvements in SIP implementation.

E. REEP SIP Development

When developing a REEP SIP schedule, the State and appropriate local agencies in each post-1987 area should be guided by the following considerations as they relate to the control strategy development and SIP auditing components of the REEP SIP:

- Stationary Source Measures

Each local district in a post-1987 area should give highest priority to considering and undertaking those control measures for which: (a) A district rule is either missing or contains a major deficiency; (b) there are significant potential emission reductions to be gained; and (c) field evaluations provide evidence that the change is warranted.

Additionally, each district should consider: (a) The existence of field evaluations for any rules which have already been investigated; (b) the amount of the potential emission reductions from the proposed action, if quantifiable; and (c) the availability of new information which supports adoption of previously considered but rejected measures.

- Transportation and Mobile Source Control Measures

Each local planning agency should include a workplan to analyze TCMs for applicability to reduce emissions, legal authority, adequate implementation resources, and public benefits. The TCM portion of the REEP SIP should also include analysis completion dates and schedules for transmitting analysis results to local government implementing agencies for consideration and action on specific TCMs.

The State of California should adopt a REEP SIP schedule for consideration of those mobile source and transportation control measures which are Statewide in nature and specifically reserved to the State for adoption and implementation. At a minimum, the State portion of the REEP SIP should contain a schedule to consider the adoption of additional TCMs and motor vehicle control measures. For the motor vehicle control measures category, this should include: (a) Excess emissions from regulated motor vehicles that are attributable to manufacturer deficiencies in design and/or improper vehicle maintenance and care; (b) more stringent emissions standard for certain motor vehicles; and (c) the use of alternative fuels and power sources related to motorized vehicles.

- Program Audits and Field Evaluations

Each REEP SIP should contain a commitment by local agencies to work with the State and EPA to correct any deficiencies in a district's programs as identified by comprehensive program audits to determine needed improvements to air pollution control programs (program audits), and studies of stationary source rule effectiveness in practice (field evaluations); as such, administrative practices, resource usage, training, and potential regulatory changes to existing rules to ensure effectiveness should be addressed. EPA encourages each post-1987 area to consider other ways the effectiveness of SIP implementation could be improved. Where a REEP audit has not been completed in time for REEP SIP adoption, the REEP SIP should contain a commitment by the relevant agency to work with the State and EPA to perform and complete such an audit.

F. REEP SIP Revision

By February 1987, and presumptively every two years thereafter, each post-1987 area will be required to have submitted to EPA a separate SIP

submittal, or REEP SIP. This submittal would contain commitments with expeditious schedules to (1) consider for adoption any additional measures which are necessary to demonstrate reasonable efforts under Part D of the Clean Air Act; (2) decide which of those additional measures to adopt and adequately justify the rejection of applicable REEP SIP measures; and (3) implement the adopted REEP SIP measures. These commitments by the adopting agency(ies) would be subject to Part D requirements related to consultation and public notice.

The REEP SIP schedule would be adopted by the appropriate districts and other local lead Part D SIP planning agencies, and would be approved by the State prior to submittal to EPA by February 1987. The State would also adopt and submit by February 1987 a REEP SIP schedule for consideration of those measures legislatively reserved to the State for adoption and implementation.

The REEP SIP schedule would include consideration of any EPA evaluations covering (1) new, and improvements to existing, stationary source control measures; (2) new, and improvements to existing, mobile source measures and TCMs; and (3) program audits and field evaluations.

The schedule should be prioritized according to the contribution of the REEP SIP measures to making a demonstration of progress as expeditiously as practicable toward the attainment of the standards. At a minimum, the REEP SIP schedule due by February 1987 would include consideration of those measures contained in the EPA-directed initial investigation of feasible control measure improvements (see below), and corrections to air pollution control program deficiencies identified by SIP auditing and field evaluations. It should be noted here however that limiting a REEP SIP to measures identified by EPA through its initial investigation may not be sufficient. State and local adopting agencies should therefore make every effort to investigate and consider the feasibility of additional measures beyond EPA's list or give higher priority to other measures which the adopting agency believes to be more applicable and/or effective than EPA's initial list.[4]

[4] To the extent necessary for attainment, adopting agencies should also investigate control strategies which may take longer than five-to-ten years to implement but which can result in significant emissions reductions in the long term. Additionally, EPA believes that any activity which may lead to a reduction of CO emissions and/or ozone precursors is a candidate for inclusion in the REEP SIP. The State's reliance on control of ozone precursors must be approved by EPA for each post-1987 area prior to submittal of the REEP SIP.

The REEP SIP schedule should contain critical dates for the adoption and implementation of the REEP SIP improvements, e.g., dates when decisions will be made whether to proceed to a public hearing on a specific measure or whether to make nonregulatory program improvements not requiring a public hearing; public hearing dates to consider adoption of REEP SIP measures; and effective implementation dates for those REEP SIP measures which are adopted.

Unless shown by an adopting agency to be totally inapplicable or ineffective for a specific community, EPA would presume that the REEP SIP measures specifically identified by EPA would be included for consideration in the REEP SIP. EPA expects the prescribed local, State and federal SIP public consultation and notice process to assist each adopting agency in determining (a) what measures should be considered and/or undertaken and when, and (b) a reasonable time frame for performing the work. The resulting schedule must demonstrate that a post-1987 area is making reasonable efforts to submit an adequate Part D SIP.

EPA also expects the REEP SIP to include commitments by the State and appropriate local agencies in each post-1987 area to work with EPA to: (a) Develop new and improved existing mobile source, stationary source, and transportation control measures; (b) identify needed air pollution control program improvements through auditing; and (c) assist in the performance of field evaluations.

G. REEP Work to Date

Actual work on the concept of a reasonable extra efforts program began in February 1985. Between then and the present, EPA has been conducting a series of meetings with post-1987 area local districts, metropolitan planning organizations, business associations, industry and public interest groups. The purpose of these meetings has been to explain to key organizations in the decision-making process the compelling basis for proceeding with additional efforts to ensure expeditious attainment of the schedule.

From February 1985 through May 1986, an initial investigation of potential control measures was directed by EPA and assisted by a variety of agencies, technical working groups, and experts in the fields of air pollution control and transportation planning. Participating groups have included: (1) Federal, State and local regulatory agencies; (2) regional planning agencies; (3) technical review groups of these agencies studying stationary and mobile source-related measures; and (4) EPA-directed consultants. This investigation has included technical analyses of the main groups of control measures covering stationary sources, TCMs, mobile sources, and new source permitting. The purpose of the analyses was to determine whether additional controls were available and the technical requirements of such controls. The results of these evaluations were then provided to the Senate and relevant post-1987 area agencies for initial consideration. Since November 1985, the State and EPA have been meeting with the districts and regional planning agencies for the four areas to discuss the results of the technical analyses.

In October 1985, the CARB committed to develop a mobile source element to the REEP SIP. In May 1986, EPA notified each post-1987 area by letter that EPA expected relevant post-1987 area agencies to consider and adopt a schedule of those REEP SIP measures they would undertake to meet Part D Clean Air Act requirements. The State would then provide both the State and local portions of the REEP SIP schedule to EPA as a SIP submittal; as such, the schedule would constitue the framework upon which future analysis. regulations, measures, projects and air program improvements would occur.

- Evaluation of Stationary Source Controls

Existing Measures—EPA has performed evaluations of existing regulations covering sixteen categories of volatile organic compound (VOC) stationary source controls in order to identify opportunities where existing emission controls could be strenthened. The sixteen categories for which REEP evaluation reports were prepared are:

1. Aerospace Coatings
2. Architectural Coatings
3. Automobile Refinishing
4. Bulk Terminals
5. Can and Coil Coatings
6. Degreasing
7. Fiberglass Impregnation
8. Flat Wood Paneling
9. Graphic Arts
10. Miscellaneous Metal Parts and Products
11. Oil Production
12. Paper, Film and Fabric Coatings
13. Petroleum Dry Cleaners
14. Refinery and Chemical Fugitives
15. Vegetable Oil Manufacturing
16. Wood Furniture Coatings

New Measures—A joint technical review process exists by which federal, State and local air pollution control agencies in California discuss and

evaluate the continuing development of new control measures. Under this process, the potential for new control is assessed for a specific source category and a new "suggested measure" for that category is drafted. Measures which show promise are forwarded to districts for adoption consideration. Under this process, an assessment of the control potential for the following categories of currently unregulated sources is to be undertaken within the next two years:

1. Wineries
2. Marine Vessels, Ballasting
3. Marine Vessels, Housekeeping
4. Commercial and Consumer Solvent Use
5. Semi-Conductor Manufacturing
6. Large Commercial Bakeries
7. Weed Oils
8. Industrial Boilers
9. Fiberglass—Plastic Fabrication
10. Rigid and Floppy Disc Manufacturing
11. Vegetable Oil Manufacturing
12. Oil Production Sumps

• Evaluation of Transportation Control Measures

EPA, CARB, and other agencies in California co-sponsored a Transportation/Air Quality Symposium in May 1985 to provide nonattainment areas with current information of air quality-beneficial transportation projects throughout the country which could be applied to comparable areas in Region 9.

In May 1986, EPA issued a "Guidance Document for Reasonable Extra Efforts Transportation Control Measures" which included information documents on eight broad categories of TCMs. All of the documents were developed by the State and EPA and were reviewed by federal, state, and local air pollution control and transportation agencies in Region 9. The Guidance Document outlines the policy procedures for preparing the transportation portion of the REEP SIP. In the eight information documents, individual control measures are identified within each TCM category that appear to have the potential for reducing emissions beyond the current SIP.

Examples of the categories which the information documents cover include:

- Ridesharing Programs—Carpool/vanpool programs
- Traffic Flow Improvements—Programs which alleviate congestion
- Parking Strategies—Programs providing disincentives for single occupant vehicles and incentives for high occupancy vehicles
- Transit—Programs which encourage the use and increase the efficiency of public transportation
- Control of Extensive Idling—Programs which discourage situations resulting in extensive automobile idling.

• Evaluation of Mobile Source Controls

As a result of a CARB hearing held in October 1985, the State committed to investigate the feasibility of further motor vehicle controls covering: (1) More stringent emissions standards for certain motor vehicles; (2) programs to reduce emissions in excess of current vehicle standards; and (3) applications of new technology, e.g., electric vehicles and the use of methanol in vehicles.

As part of this commitment, the State took partial action on the mobile source portion of the REEP SIP by adopting a Statewide reduction goal of 190 tons/day for hydrocarbon emissions and 2,030 tons/day for carbon monoxide emissions by the year 2000. For the South Coast, this goal would be translated into 80 tons/day for hydrocarbon emissions and 870 tons/day for CO emissions. These goals are to be met through the development and implementation of specific mobile source control measures. They are intended to replace, in part, long range strategies adopted by the State as part of the 1982 SIPs, with a commitment to achieve a minimum quantifiable reduction through the development of an excess emissions reduction strategy.

• Comprehensive Program Audits

Two of the four post-1987 areas (Ventura and Fresno) have had recent program audits conducted which were sufficient in scope to serve as the basis for the REEP comprehensive program audit. EPA will offer recommendations for program improvements to these districts prior to their adoption of the 1987 REEP SIP.

The remaining two post-1987 areas (South Coast and Sacramento) will undergo comprehensive program audits during the summer and fall of 1986, respectively.

Additionally, to assist post-1987 area districts, EPA is performing the following analysis related to New Source Review (NSR): (1) Assessment of each local district's program for the administration of the NSR rule through a detailed comprehensive audit; and (2) assessment of the overall effectiveness of the existing NSR program in meeting the objectives of the Clean Air Act.

This analysis will be used by EPA to assess the performance of existing NSR programs in each post-1987 area and will be the basis for any changes in (a) administrative practices related to the issuance and enforcement of permits, and (b) the NSR rule itself, which EPA may recommend prior to a district's time frame for adoption of a REEP SIP.

III. Public Comments

EPA is soliciting public comments on all aspects of the REEP as described in this notice and the documents referenced in this notice. EPA considers today's action as only one component of an ongoing effort to conduct an active, open, and effective dialogue with all interested groups to define the best possible way to address the nonattainment problem and to achieve the NAAQS in California. The general policy goals announced for the REEP will be pursued in public notice and comment rulemakings on individual SIP revisions. In these individual rulemaking actions, interested parties will have full opportunity to comment on the specific implementation of the REEP's general principles and to seek judicial review. However, this notice is not a final regulatory action and is therefore not subject to judicial review under section 307(b) of the Clean Air Act. Other opportunities will also occur over the next several months through meetings with government agencies, the public and the private sector on the general program approach and specific issues related to ozone control strategy development.

EPA is accepting comments on all aspects of the REEP, including especially its legal underpinnings and the factors EPA should consider in making reasonable extra efforts determinations. With regard to the legal basis for REEP, EPA suggests that commenters consider the following issues: (a) Whether a program requiring plans showing only expeditious progress toward attainment in these California areas, rather than actual attainment by the end of 1987, is consistent with Congressional intent; and, (b) whether EPA may withhold imposition of the construction ban in these areas if they are still experiencing violations of the standards once 1987 passes.

With regard to the second topic, EPA is inclined to assess reasonable efforts as the extent to which commitments are made by State and local agencies to ensure that Part D requirements are met expeditiously, through implementation of the 1982 SIP and the adoption and implementation of a REEP SIP schedule. Following submittal of the California REEP SIP due February 1987, EPA will publish rulemaking which proposes to approve or disapprove the schedule. If EPA determines, after public consultation, that the schedule itself is not sufficiently adequate to constitute reasonable efforts on the part of the State, EPA will initiate a rulemaking, in accordance with the procedures outlined

in 45 FR 24892 (April 10, 1980) and in coordination with the Department of Transportation, to impose the funding cutoffs described in section 176(a).

When determining whether the State has made such reasonable efforts, EPA intends to consider all relevant factors including giving significant weight to each of the following:

(a) Whether commitments which were adopted in the 1982 Plan pursuant to EPA's 1982 Plan policy continue to be met;

(b) Whether EPA receives a REEP SIP schedule from the State updating the 1982 SIP schedule and containing commitments of the relevant State and local agencies to consider the development, adoption and implementation of all additional CO and/or ozone measures and other program enhancements necessary to attain and maintain the relevant NAAQS as expeditiously as practicable;

(c) The extent to which the State and local agencies commit to consider those control measures and program enhancements which EPA has identified through its investigation of feasible regulatory improvements and programs audits for the relevant area;

(d) Whether the State and local agencies adequately justify any decision not to commit to consider the adoption and/or implementation of any measures and other program enhancements that EPA has identified through its investigation of feasible regulatory improvements and program audits for the relevant area;

(e) The extent to which the State commits to implement existing federally-mandated controls or new federally-mandated controls which EPA may identify in guidance to the State as presumptively reasonable for application in urban areas around the country;

(f) Whether the State adequately justifies any failure to adopt and implement controls which EPA identifies in guidance to the State as presumptively reasonable for application in urban areas around the country; and

(g) Whether the State and local agencies commit to expeditious adoption and implementation of control measures that are reasonably available and provide a reasonable potential for air quality improvement.

While EPA is accepting comments on all aspects of the REEP, EPA would like to focus attention and comment on one area of the Program which currently requires special consideration. Namely, how should the process and criteria that EPA uses in making its determination of reasonable efforts be refined? The following are specific questions which should help focus the comments.

1. To what extent should the cost of control measures be considered? What cost factors should be examined? Should all available control measures be presumed to be mandatory unless demonstrated to EPA to be infeasible for a specific area?

2. What factors should be considered in determining the technological feasibility and applicability of control measures in each post-1987 area?

3. Should EPA establish an overall level of emission reduction or air quality improvement for each of the four post-1987 areas in California? If so, how should this be quantified and progress monitored?

4. Should there be emission reduction targets or percent improvements for each main source sector-stationary sources, TCMs, mobile sources, and major source permitting? If so, how could they be established?

5. What factors should be considered in determining implementation of the 1982 SIPs? To what extent should non-implementation of the existing SIP affect an area's participation in REEP, or EPA's imposition of sanctions? What should be EPA's recourse for non-implementation of "voluntary measures" (which are dependent on the public's cooperation) or measures dependent on currently unavailable funding?

6. What factors should be considered in determining the priority of the development and adoption of the individual control measures?

7. In addition to hydrocarbons, or volatile organic compounds (VOCs), nitrogen oxides (NO_x) are a precursor to ozone formation. CARB's analysis of ambient air quality data and emissions suggests that reductions in NO_x emissions would help reduce ozone concentrations in Ventura and the South Coast (especially in areas where ozone levels are the highest). The Ventura County SIP incorporates NO_x controls as necessary for ozone attainment while the South Coast ozone plan assumes a level of NO_x control as part of its ozone control strategy. EPA sees the need to consider NO_x as part of the REEP evaluation for selected areas where (a) studies or modeling analyses show that NO_x control can reduce ambient ozone concentrations, and (b) NO_x controls form a part of the EPA-approved ozone control strategy. To what extent should NO_x controls, combined with further VOC reductions, be required as part of the REEP demonstration in appropriate nonattainment areas?

8. How can future REEP-SIPs (beginning in 1989) be more integrated with ongoing local nonattainment area planning efforts?

9. The 1982 SIPs for the four post-1987 areas in California indicated that attainment of the ozone standard did not appear likely with currently available measures or measures which could be implemented in the next three to five years. What mechanism should EPA use to require and federally enforce commitments, a schedule, and a tracking system to study and develop "longer-term" measures (i.e., measures that will take longer than five years to implement? What resources should EPA employ to ensure that the commitments to evaluate and develop long-term measures are met?

IV. Future Actions

Currently, EPA has no plans to issue a comprehensive section 110(a)(2)(H) SIP call for the four post-1987 nonattainment areas in California. The existing plans for these areas have not yet received full EPA approval under Part D. As a result, each area faces a continuing obligation under the Clean Air Act, even without a SIP call, to submit SIP improvements that will produce progress as expeditiously as practicable toward attainment of the standards. EPA will review comments on today's notice however to assist in its determination of whether future REEP SIPs (beginning in 1989) should be more integrated with the continuing planning process which already exists in certain nonattainment areas. Any final REEP SIP determination for any of the post-1987 areas will be made by EPA based on full analysis of the data, consideration of the local/State public workshop and public hearing record, and any other public comments received on this notice as well as on proposal notices on the REEP SIP itself. Because a final determination of what constitutes reasonable efforts for each post-1987 area will not be made prior to public notice and comment rulemaking on each individual REEP SIP, EPA will continue to schedule discussions with post-1987 area agencies toward the consideration and adoption of the REEP SIP by February 1987.

EPA intends to hold two public meetings in conjunction with today's **Federal Register** notice. The purpose of the meetings is to have a public discussion of the concepts on which the REEP is structured and EPA's plans for its implementation. The meetings will be held in the fall of this year. All known interested groups will be individually notified of the exact time and place of each meeting. Other interested groups may request that EPA also notify them.

As part of EPA's continuing effort to maintain an active, open, and effective dialogue on the REEP, EPA intends to participate in a regular series of public meetings with public interested groups and the private sector.

The comments received as a result of today's notice and its related public meeting will be fully considered by EPA in developing the program policies related to REEP. In order to most effectively administer its mandate under the Clean Air Act to ensure attainment of the CO and ozone NAAQS, EPA intends to continue to work with the affected public to conduct a vigorous post-1987 nonattainment area program, consistent with Part D of the Act.

List of Subjects in 40 CFR Part 51

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Hydrocarbons, Carbon monoxide, Nitrogen oxides.

Dated: September 16, 1986.

Judith E. Ayres,

Regional Administrator.

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H.R. 3443/Pub. L. 99-416

To designate the Closed Basin Conveyance Channel of the Closed Basin Division, San Luis Valley Project, Colorado, as the "Franklin Eddy Canal" (Sept. 23, 1986; 100 Stat. 950; 1 page) Price: $1.00

H.J. Res. 60/Pub. L. 99-417

To designate the week beginning September 15, 1986, as "National School-Age Child Care Awareness Week (Sept. 23, 1986; 100 Stat. 951; 1 page) Price: $1.00

S. 2462/Pub. L. 99-418

To provide for the awarding of a special gold medal to Aaron Copland (Sept. 23, 1986; 100 Stat. 952; 2 pages) Price: $1.00